

**NAVIDEA BIOPHARMACEUTICALS, INC. vs MICHAEL M. GOLDBERG, M.D.**  
**William F. Murray, CPA/ABV/CFF, ASA on 12/06/2021**

1                   IN THE UNITED STATES DISTRICT COURT  
                  FOR THE DISTRICT OF SOUTHERN NEW YORK

2

3      NAVIDEA BIOPHARMACEUTICALS, INC. CIVIL ACTION NO.

4 1:19-cv-01578-VEC

5 VS.

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MICHAEL M. GOLDBERG, M.D.                      DECEMBER 6, 2021

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11 DEPOSITION OF WILLIAM F. MURRAY, CPA/ABV/CFF, ASA

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17      Reported by:      Wendy J. Leard  
18                              Registered Merit Reporter  
                                 CSR # 39

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1 I N D E X

2 -----

3 WITNESS WILLIAM F. MURRAY, CPA/ABV/CFF, ASA

4 -----

5 DIRECT EXAMINATION BY MR. ZIMMER 5

6 -----

7 EXHIBIT DESCRIPTION PAGE

8 -----

9 Defendant's Exhibit A, Expert Rebuttal Report  
 10 of William F. Murray, ASA, CPA/AB, CFF 5

11 (The original exhibit was filed  
 12 with the original transcript.)

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1 . . . Deposition of WILLIAM F. MURRAY,  
2 CPA, ABV/CFF, ASA, taken on behalf of the  
3 defendant in the hereinbefore entitled action,  
4 pursuant to the Federal Rules of Civil Procedure,  
5 before Wendy J. Leard, RMR, duly qualified Notary  
6 Public in and for the State of Connecticut, held  
7 at the offices of Halloran & Sage, 225 Asylum  
8 Street, Hartford, Connecticut, commencing at  
9 9:44 a.m., on Monday, December 6, 2021.

10

## 11 S T I P U L A T I O N S

12

13 It is hereby stipulated and agreed, by and  
14 among counsel for the respective parties, that all  
15 formalities in connection with the taking of this  
16 deposition, including time, place, sufficiency of  
17 notice and the authority of the officer before  
18 whom it is being taken, may be and are hereby  
19 waived.

20

21 It is further stipulated and agreed that  
22 objections, other than as to form, are reserved to  
23 the time of trial and that the reading and signing  
24 of the deposition are hereby not waived.

25

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1           It is further stipulated and agreed  
2   that the proof of the qualifications of the notary  
3   public before whom the deposition is being taken  
4   is hereby waived.

5

6           (Defendant's Exhibit A was marked for  
7   identification and is described in the index.)

8

9           WILLIAM F. MURRAY, CPA/ABV/CFF, ASA,  
10   Deponent, having first been duly sworn, deposes  
11   and states as follows:

12

13                               DIRECT EXAMINATION

14   BY MR. ZIMMER:

15       Q     Good morning, Mr. Murray.

16           My name is Greg Zimmer. I represent  
17   Dr. Michael Goldberg in this action. I'll be  
18   taking your deposition today.

19           I assume you've been deposed before?

20       A     A few times, yes.

21       Q     I actually see you've been deposed before.  
22           So just a couple of ground rules.

23           Is there any reason you wouldn't be able  
24   to understand the questions I ask today or give  
25   answers accordingly?

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1 A No.

2 Q Okay. If, at any time, you don't  
3 understand one of the questions, please ask me to  
4 clarify. I'll be happy to do it. If not, it will  
5 be assumed that you understood the question and  
6 answered it accordingly.

7 If you can't hear a question, if you  
8 mishear it -- if you think you misheard it, ask;  
9 I'll be happy to repeat it. Otherwise, it will be  
10 assumed that you heard the question and answered  
11 it accordingly.

12 That should do it. We can deal with any  
13 other rules as we go, but I'm sure you're pretty  
14 much familiar with them.

15 If you need to take a break at any time,  
16 that's fine. I would just ask that you not take a  
17 break while there is a question pending.

18 A I understand. Thank you.

19 Q Okay. I'm going to just ask you to hold  
20 on to what's been premarked as Exhibit A.

21 MR. ZIMMER: And here is a copy --

22 MR. KAZAN: Thanks.

23 MR. ZIMMER: -- for counsel.

24 BY MR. ZIMMER:

25 Q It's turns out -- it looks like it's

1 missing the last two pages. I don't intend to ask  
2 anything about those pages. I just want to make  
3 sure the record is complete.

4 It's the last pages of the addenda. So  
5 the report is complete, and I'm going to ask you  
6 about the report and possibly some of your prior  
7 court appearances.

8 A Okay.

9 Q That portion of the exhibit is complete.

10 MR. KAZAN: Off the record for a  
11 second.

12 (A conversation was held off the record.)

13 MR. ZIMMER: Back on the record.

14 BY MR. ZIMMER:

15 Q Could you just give me a brief summary of  
16 your educational background?

17 A I have a bachelor of arts in accounting.  
18 I took one graduate course in business law.

19 Q Okay. You made the right choice.

20 A What do you mean?

21 Q Going with the accounting.

22 A I don't know about that. I don't do  
23 accounting anymore but . . .

24 Q Okay. How about your work history?

25 A I started --

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1           **Q     Postgraduate, obviously.**

2           A     Postgraduate, I started at a Big -- what  
3     was then a Big 8 accounting firm. From there I  
4     went to an insurance company, another insurance  
5     company, went to a manufacturer of auto parts, and  
6     then from there I went to -- can I refresh my  
7     memory?

8           **Q     Sure, of course.**

9           A     It's been a while.  
10                I went to -- oh, Gerber Scientific, which  
11     is here in the Hartford area. After that, I went  
12     to a company called Centerprise Advisors, which  
13     became UHY Advisors, which was subsequently merged  
14     to Markham. And then, out of there, I went to  
15     Willamette Management Associates and then went to  
16     New York City to work for Anchin, Block & Anchin.

17               I left Anchin and went to BlumShapiro,  
18     which is now CLA, I think. I think they merged  
19     with CliftonLarsonAllen last year. And from  
20     there, I went to Management Planning, Inc., where  
21     I currently am.

22           **Q     What kind of work were you doing at**  
23     **Coopers & Lybrand?**

24           A     At Coopers & Lybrand, I was a staff  
25     accountant in audit.



1           Q       In audit?

2                   And Travelers, it says, "Senior Auditor."

3                   Did you only do audit work there?

4           A       At Travelers, I was part of the internal  
5       audit team, and we mostly assisted with the  
6       external audit.

7           Q       Okay. At Aetna?

8           A       Aetna, I was internal audit also. I did  
9       more operational audits.

10          Q       Okay. And Echlin?

11          A       Echlin was an automotive -- they actually  
12       started -- I think they got bought out by Dana  
13       automotive years ago. They make after-market auto  
14       parts, and I did IT audit for them.

15          Q       How does that differ from, you know,  
16       financial auditing?

17          A       It's more looking at internal controls and  
18       systems. When I was at Aetna, part of the -- for  
19       the last year I was there, I was on the special  
20       projects team where we went out and looked at  
21       building internal controls in the new systems,  
22       because insurance companies tend to like to build  
23       their own systems.

24          Q       Right.

25          A       So at that time they wanted to build

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1 internal controls into the systems when they  
2 developed it.

3 Q And those were internal financial  
4 controls?

5 A Mainly, yes.

6 Q Okay. And was that the type of work you  
7 were doing at Echlin?

8 A At Echlin, I was looking at the internal  
9 controls. I was also looking at the IT system to  
10 make sure they had controls around their IT  
11 infrastructure.

12 Q But, again, financial controls?

13 A Financial and, you know, like, security  
14 controls, change controls. I mean, the whole IT  
15 environment.

16 Q Okay. Not strictly focused on accounting  
17 at that point?

18 A That's correct. Yes.

19 Q Okay. Gerber Scientific, what did you do?

20 A Gerber Scientific, I went in as the IT  
21 auditor, and I ended up doing special projects.  
22 Most of my work there was special projects,  
23 operational projects.

24 At one point, I became the controller of a  
25 start-up subsidiary. I ended up in accounting at

1 one point, and then I ended up in financial  
2 reporting.

3 Q So you transitioned back into the  
4 financial accounting through that -- in that job.  
5 Is that right?

6 It sounds like you went in more  
7 operationally, similar to what you were doing at  
8 Echlin, and then ended up --

9 A I did a lot of things across the board at  
10 Gerber. I did a lot of operational stuff. I did  
11 a lot of accounting stuff. I ended up in finance  
12 reporting.

13 We ultimately ended up working on a  
14 project team. We had an SEC investigation at one  
15 point when we were a public company, and I worked  
16 on the team that worked with the outside  
17 consultants.

18 That's kind of how I got into this  
19 business.

20 Q Okay. And Centerprise?

21 A Centerprise was -- since I worked at  
22 Gerber, I did some M&A work at Gerber as well, so  
23 I had that kind of background. So that's kind of  
24 where I got started in the litigation damage  
25 support area, is Centerprise.

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1           Q       Okay. Do you remember whether you did  
2 work on the valuation of public securities at  
3 Centerprise?

4           A       I don't recall at Centerprise. I know it  
5 comes up on occasion. It's come up a number of  
6 times throughout my history, but I don't recall it  
7 with specific firms.

8           Q       Okay. Willamette Management?

9           A       Willamette is a boutique valuation firm.  
10 That's all they do. So I worked for a guy at  
11 Centerprise. He left and went to Willamette and  
12 took me along with him.

13          Q       And that was in -- not a  
14 litigation-related firm? Was that more of a  
15 business-related firm?

16          A       We did both business valuation and  
17 litigation support, so we were -- I worked for a  
18 guy who was an expert witness.

19          Q       Okay. Any work on public securities  
20 there?

21          A       Again, I don't recall that far back.

22          Q       Okay. How about Anchin, Block?

23          A       Anchin, Block & Anchin is an accounting  
24 firm based in New York City. I worked in the  
25 valuation litigation group. I did business

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1 valuation, along with litigation support, there,  
2 so I worked for someone who was a testifying  
3 expert.

4 Q Okay. Any publicly traded stock issues  
5 there?

6 A Yes.

7 Q Okay. And then BlumShapiro?

8 A BlumShapiro is a public accounting firm  
9 based here in Connecticut. I worked in New York.  
10 I was commuting from Fairfield into New York, so  
11 they caught me at a bad commute day.

12 And I -- at some point I ran the  
13 litigation valuation group at BlumShapiro as a  
14 partner.

15 Q Okay. Did you do public securities work  
16 there?

17 A There were also matters that involved  
18 public securities at BlumShapiro.

19 Q That you worked on?

20 A Yes.

21 Q Okay. And then Management Planning, Inc.?

22 A Management Planning, Inc., is a boutique  
23 valuation litigation firm.

24 Q Okay. And what do you do there? Is it  
25 audits?

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1           A       I'm a managing director. I'm basically  
2     the Connecticut office. I do litigation and  
3     valuation for damage cases like this, divorce  
4     cases, shareholder disputes. I do valuation work  
5     for shareholder disputes. I do valuation work for  
6     trust estate matters.

7           Q       Is it strictly litigation related?

8           A       No.

9           Q       Okay. Do you think that your education  
10    and work history qualify to you opine on the value  
11    of publicly traded securities?

12          A       We've done it a lot. It comes up a lot in  
13    our practice, especially at Management Planning.

14          Q       Do you think your education and work  
15    history qualifies to you opine on it?

16          A       Yes.

17          Q       Okay. Are you offering any kind of an  
18    opinion as to whether -- I'm going to refer to  
19    "Mr. Orr" today and that's Terry Orr. That's the  
20    expert that's been engaged by Dr. Goldberg.

21                 And you've reviewed his report, and your  
22    report is actually -- you provided a report in  
23    rebuttal to that report.

24                 So when I speak about "your report," I'm  
25    going to be talking about your rebuttal report.

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1 Is that okay?

2 A That's correct.

3 Q Do you understand those terms?

4 A I understand. Thank you.

5 Q So are you offering an opinion as to  
6 whether Mr. Orr's background and education  
7 qualifies him to offer the opinions in his report?

8 I understand that you take issue with, you  
9 know, some of his methodology and some of his  
10 conclusions and things like that, but are you  
11 opining on the sufficiency of his education and  
12 work history?

13 MR. KAZAN: Object to the form.

14 THE WITNESS: I have no opinion on  
15 his background.

16 BY MR. ZIMMER:

17 Q Okay. First of all, I want to get down to  
18 exactly what you're doing in the report.

19 Are you offering any opinion or rebuttal  
20 regarding legends that were placed on shares of  
21 Navidea Biopharmaceuticals, Inc., that were  
22 purportedly issued to Dr. Golberg by Navidea?

23 A No.

24 Q Are you offering any opinion or rebuttal  
25 regarding the use of antidilution provisions in

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1 contracts calling for the issuance of specific  
2 numbers of publicly traded shares?

3 A No.

4 Q Are you offering any opinion or rebuttal  
5 regarding the valuation of an award to Dr. Golberg  
6 of Navidea shares after it implemented a reverse  
7 stock split in 2019?

8 MR. KAZAN: Object to the form.

9 THE WITNESS: I'm only offering an  
10 opinion based on Mr. Orr's methodology of  
11 valuing those shares. I have no comment  
12 on anything else related to that.

13 MR. ZIMMER: We'll come back to that.  
14 We'll come back to that after we ask some  
15 questions on the main opinion.

16 BY MR. ZIMMER:

17 Q Okay. In your report, you take issue with  
18 Mr. Orr because -- this is a quote -- he "fails to  
19 consider the fact that Dr. Golberg claims that all  
20 shares should have been issued as of August 14,  
21 2018."

22 How do you feel that affects his opinion?

23 A He picks certain dates in his report, and  
24 my opinion or my view is he should have --  
25 Dr. Golberg indicated the shares should have been



1 issued on a certain date, which would have  
2 triggered a time clock running.

3 So by choosing other dates, it doesn't  
4 consider the fact that he -- Mr. Goldberg contends  
5 that his shares should have been issued at the  
6 date of the agreement.

7 Q Are you offering an opinion that the  
8 shares should have been issued on August 14, 2018,  
9 under the parties' agreement?

10 A No.

11 Q You know, just by way of background,  
12 Dr. Golberg, Navidea Biopharmaceuticals, Inc.,  
13 which I'll refer to as "Navidea," and Macrophage  
14 Therapeutics, Inc., which I'll refer to as  
15 "Macrophage," entered into a three-party contract  
16 as of August 14, 2018.

17 You're aware of that. Right?

18 A I'm aware that they entered into an  
19 agreement. Yes.

20 Q Okay. And I'm going to refer to that as  
21 the "August 14 agreement."

22 Have you reviewed the agreement?

23 A I have, yes.

24 Q Okay. So you're not offering an opinion  
25 as to when Dr. Golberg should have been delivered

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1     **shares under that agreement?**

2           A     No.

3           Q     Okay. Are you aware that the agreement  
4     provided for different time frames for different  
5     numbers of shares to be issued to Dr. Golberg?

6           A     Yes.

7           Q     Okay. Did you see that the August 14  
8     agreement provides that the shares Dr. Golberg was  
9     to receive were to be issued pursuant to  
10    Regulation D of the Securities Act of 1933?

11                   MR. KAZAN: Object to the form.

12                   THE WITNESS: I'd have to refer to  
13                   the agreement. I do recall something  
14                   along those lines.

15    BY MR. ZIMMER:

16           Q     Are you offering an opinion as to whether  
17     the shares issued to Dr. Golberg were issued in  
18     conformity with Regulation D of the Securities Act  
19     of 1933?

20           A     I am not.

21           Q     Are you familiar with Regulation D?

22           A     From a layman's point, but it's a legal  
23     issue.

24           Q     Do you know whether Regulation D prohibits  
25     immediate sale of securities issued to someone in

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1 Dr. Golberg's position at the time he left

2 Navidea? Are you aware that he was the CEO of

3 Navidea up until August 14, 2018?

4 MR. KAZAN: Object to the form.

5 THE WITNESS: That's what I recall.

6 But, again, the application of Regulation

7 D is a legal issue, and I have no opinion

8 on that.

9 MR. ZIMMER: Okay.

10 BY MR. ZIMMER:

11 Q Did you see that there was a provision

12 prohibiting the sale of shares issued pursuant to

13 the August 14 agreement for six months after their

14 issuance?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: I would have to look at

17 the agreement, but that's what I generally

18 recall.

19 MR. ZIMMER: Okay.

20 BY MR. ZIMMER:

21 Q Did you incorporate that into your

22 opinions?

23 A I incorporated that into my calculation.

24 Yes.

25 Q Okay. And how so?

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1           A       I took the date at which Mr. Goldberg  
2       assumed he should have his shares and we looked at  
3       six months later when he could trade those shares.

4           Q       And you used August 14, 2018, as a  
5       starting point?

6           A       Yes.

7           Q       Are you aware that certain shares were not  
8       supposed to be issued until January 1, 2019?

9                   MR. KAZAN: Object to form.

10                  THE WITNESS: Again, as I recall, I  
11       took that into my analysis.

12                  MR. ZIMMER: Okay.

13       BY MR. ZIMMER:

14           Q       Are you aware that certain shares provided  
15       for the August 14 agreement have never been  
16       issued?

17           A       Yes. I'm aware of that.

18           Q       Does your report provide an opinion on the  
19       value of those shares?

20           A       We assumed they would have been issued  
21       when they were supposed to be issued under the  
22       agreement.

23           Q       Okay. Do you know when they were supposed  
24       to be issued?

25                  MR. KAZAN: Object to the form.

1                   THE WITNESS: I don't recall the  
2                   date. I remember it's in the agreement,  
3                   and that's the date we used. I don't  
4                   recall the exact date.

5                   MR. ZIMMER: Okay.

6 BY MR. ZIMMER:

7           Q       But it didn't affect your opinion that  
8           they were never, in fact, issued?

9           A       No.

10          Q       Okay. Did you see that the August 14  
11          agreement provides for 10 million shares to be  
12          placed into an escrow account that would be  
13          released under certain conditions set forth in the  
14          agreement?

15                   MR. KAZAN: Object to the form.

16                   THE WITNESS: Yes. I do recall that.

17 BY MR. ZIMMER:

18          Q       Did you take that into account in your  
19          opinion?

20          A       Yes.

21          Q       How so?

22          A       We assumed that those shares would have  
23          been held for 18 months, in my opinion.

24          Q       Are you aware that they still have not  
25          been released from escrow?

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1           A       I am aware of that, yes.

2           Q       Okay. Could Dr. Golberg sell shares  
3 before they were issued to him?

4           A       I'm not sure I understand the question.

5           Q       Well, I'm trying to understand why you  
6 used the August 14 date.

7                   Are you aware that shares -- certain  
8 shares were issued to Dr. Golberg in November of  
9 2018?

10          A       I am aware of that, yes.

11          Q       Are you aware that no shares were issued  
12 to Dr. Golberg on August 14, 2018?

13          A       Yes. I'm aware of that.

14          Q       So could he have sold the shares that had  
15 not yet been issued to him between August 14 and  
16 November of 2018?

17          A       I assume that his shares would have been  
18 issued on August 14.

19          Q       Okay. And what was the basis for the  
20 assumption?

21          A       As I recall, he indicated that he thought  
22 all of the shares should have been issued to him  
23 on August 14.

24          Q       Okay. Did you do any kind of research or  
25 any -- have any conversations to determine whether

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1     that was, in fact, the case?

2           A     What do you mean? I don't understand the  
3     question.

4           Q     I mean, do you agree with his proposition  
5     that they should have been issued on the 14th of  
6     August 2018?

7                     MR. KAZAN: Object to the form.

8                     THE WITNESS: I have no opinion on  
9     that.

10                    MR. ZIMMER: Okay.

11     BY MR. ZIMMER:

12           Q     Did you know that the shares that were  
13     issued in Dr. Golberg's name in November contained  
14     restrictive legends?

15           A     I do recall that, yes.

16           Q     Okay. Did you review the legends?

17           A     Only to the extent that Mr. Orr included  
18     them in his report. I didn't look at the actual  
19     stock legends.

20           Q     Do you recall what the legends embodied?  
21     What they said?

22           A     Not the exact verbiage, no.

23           Q     Well, do you remember -- do you recall the  
24     implication of the legends? What the restrictions  
25     were that they placed on the sale of the stock?

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1 MR. KAZAN: I object to the form.

2 THE WITNESS: Not specifically, no.

3 MR. ZIMMER: Okay.

4 BY MR. ZIMMER:

5 Q Did you take that into account when you  
6 did your valuation?

7 A My valuation takes into account that, A,  
8 there was a six-month holding period; and B, some  
9 shares were held for up to 18 months.

10 Q But it doesn't take into account that the  
11 shares were issued with specific legends that  
12 placed specific restrictions on the stock?

13 A Again, I have no opinion on the legends of  
14 the stock.

15 Q Well, I understand you have no opinions on  
16 the legends, because you said it, but your  
17 analysis is an analysis of the impact -- well,  
18 strike that. We'll get to that.

19 Okay. Do you know if the legends on the  
20 shares that were issued in Dr. Golberg's name were  
21 ever removed from the stock?

22 A My understanding, they were not.

23 Q Okay. Did that affect your opinion in any  
24 way?

25 A No.



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1           **Q       Why not?**

2           A       Because we assumed that, but for the  
3       disagreement, the shares would have been issued on  
4       August 14, and they would have run the course of  
5       the -- whatever the agreement said.

6           **Q       Okay. Can you look at page 6 of your**  
7       **report?**

8           A       Sure.

9           **Q       So you use two specific dates there. What**  
10       **do those dates represent?**

11                   I'm sorry. I'm looking at the table at  
12       the bottom of page 6, and there's -- there are two  
13       dates listed on the row labeled "Sale Date."

14                   **What do those dates represent?**

15           A       So the first date is six months after  
16       August 14, and the other is one year later. So  
17       that would have been 18 months after.

18           **Q       Okay. And why did you pick those dates?**

19           A       Because the initial block of shares would  
20       have been held for six months, and then there were  
21       shares in escrow that would have been held for  
22       18 months, which would put them at the  
23       February 14, 2020, date.

24           **Q       Well, when you say "held," do you mean**  
25       **they would have been restricted from sale or that**

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1     they would have only actually been held for that  
2     period of time?

3           A     Again, my understanding is they were held  
4     in escrow.  Whether they would have been  
5     restricted for that period, I don't know.  I can't  
6     answer that.

7           Q     But when you say they would have been held  
8     for that time, what does that mean?  What happened  
9     when that time expired, in your opinion?

10          A     My assumption is they would have been  
11     available for sale at that period.

12          Q     Available for sale.

13                   Is it your assumption they would have been  
14     sold on those dates?

15          A     My assumption is they would -- they would  
16     have been sold as soon as they were available for  
17     sale.

18          Q     And what's that assumption based on?

19          A     It's just the first date it was available  
20     for sale.

21          Q     That's the only basis?

22          A     That's the only basis, yes.

23          Q     Did you do any research or any review of  
24     Dr. Golberg's trading history in Navidea shares?

25          A     No.

1 Q Did you do any research or background into  
2 Dr. Golberg's ownership of Navidea shares?

3 A No.

4 Q Did you interview Dr. Golberg at all to  
5 try to determine what he might have done with the  
6 shares?

7 A No.

8 Q Okay. You just used the first date that  
9 they could possibly be traded?

10 A Correct.

11 Q Okay. What was the basis for that?

12 A I assumed, when they were available, he  
13 would have been able to sell them.

14 Q Well, I understand that it's probably a  
15 fair assumption when they were available, he would  
16 have been able to trade them.

17 What is the basis for the assumption that,  
18 as soon as they became available, he would have,  
19 in fact, traded them?

20 A I can't speculate to what he would have or  
21 would not have done.

22 Q Okay. Do you know anything about  
23 Dr. Golberg's financial condition?

24 A No.

25 Q Do you know if he had any need for funds

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1     that would have required him to sell the shares  
2     immediately?

3           A     No.

4           Q     Okay. Do you know whether he held other  
5     shares of Navidea?

6           A     I don't recall.

7           Q     Okay. Do you know whether he sold other  
8     shares of Navidea?

9           A     I don't recall.

10          Q     You think you knew and you don't recall on  
11     those last two questions, or you didn't -- well,  
12     strike that.

13                     Did you ever inquire whether Dr. Golberg  
14     owned shares of Navidea other than the ones  
15     relating to the August 14 agreement?

16          A     I don't recall. I know I asked a question  
17     of what his financial condition was.

18          Q     Okay. And what did you get in response to  
19     that?

20          A     As I recall, he had ample resources. He  
21     did not need the money.

22          Q     Okay. Do you recall whether you asked  
23     whether he owned other shares of Navidea, in  
24     addition to the ones relating to the August 14  
25     agreement?

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1           A       That, I don't recall. I don't remember  
2       him owning other shares.

3           Q       Did you ask? Did you inquire whether he  
4       owned other shares?

5           A       I don't recall if I asked or not.

6           Q       Okay. You don't think that would be  
7       important to know?

8           A       No.

9           Q       Okay. And, again, are you aware of his  
10      trading history in Navidea shares?

11          A       No.

12          Q       Okay. You're aware that he was the CEO of  
13      Navidea up until August 14, 2018?

14          A       Yes.

15          Q       And were you aware that he was a board  
16      member of Navidea up until August 14, 2018?

17          A       Yes.

18          Q       Do you know of Dr. Golberg's educational  
19      background?

20          A       No.

21          Q       Do you know of his employment background?

22          A       No.

23          Q       Do you know whether he is familiar with  
24      the financial markets?

25          A       No.

1 Q Do you know how closely he monitors  
2 Navidea stock?

3 A No.

4 Q Do you know how closely he monitors  
5 Navidea share prices?

6 A No.

7 Q Okay. On page 7 of your report -- I'll  
8 find the exact spot if you want, but I don't think  
9 it's necessary -- you state, Navidea stock was  
10 thinly traded in February of 2019 and February of  
11 2020.

12 Can you define "thinly traded"?

13 A It means that not a lot of shares traded  
14 on a daily basis.

15 Q Is there a formal definition of it?

16 A I don't know if there's a formal  
17 definition. I think it's more of a generic term.

18 Q Is there a threshold that you would  
19 analyze to see whether a stock was thinly traded  
20 or not?

21 A I don't know if it would be a threshold or  
22 it's more of a judgment call.

23 Q So what was the basis for your statement  
24 that the stock was thinly traded in February 2019  
25 and February of 2020?

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1           A       I looked at the daily trading volumes, and  
2       they were very low.

3           **Q       Low relative to what?**

4           A       Relative to the number of shares  
5       outstanding.

6           **Q       Okay. And did you apply any kind of**  
7       **formula to determine that they were thinly traded?**

8           A       No.

9           **Q       It was your judgment?**

10          A       My judgment. Yes.

11          **Q       What was the judgment based on?**

12          A       Based on history -- my history of looking  
13       at publicly traded stock.

14          **Q       What is that history?**

15          A       Well, I mean, in the valuation process --  
16       and I've done hundreds of valuations, probably  
17       thousands -- one thing you look at is public  
18       companies, and you look at public companies in the  
19       same industry.

20                 And one of the things you eliminate from  
21       your analysis is companies that do not trade  
22       actively. They're thinly traded.

23                 It also comes up from time to time when  
24       you have to value thinly traded stock, such as  
25       this, where you have lock issues, where you have

1 liquidity issues.

2 Q Do you know whether Dr. Golberg sold any  
3 Navidea stock in 2018?

4 A No.

5 Q Do you know whether Dr. Golberg sold any  
6 Navidea stock in 2019?

7 A No.

8 Q Okay. Are you familiar with Navidea  
9 Biopharmaceuticals' business?

10 A From a high level, generic level, yes.

11 Q What's your understanding of the business?

12 A They do -- I'd have to refresh my memory  
13 from my report.

14 Q Take your time.

15 A I thought I included it in my report.

16 I know they do some kind of medical  
17 technology. I don't know the exact nature of it.  
18 I don't recall the exact nature.

19 Q Do you know if they manufacture anything?

20 A I don't recall.

21 Q Do you know if they sell anything?

22 A I know they have medical technology, but I  
23 don't recall how they generate their revenue.

24 Q You don't know how they generate revenue?

25 A I don't recall, off the top of my head,



1 no.

2 Q Do you know for sure that they do generate  
3 revenue?

4 A My understanding is they do. Yes.

5 Q Okay. Are you familiar with research and  
6 development firms?

7 A Yes.

8 Q Do they typically generate a lot of  
9 revenue?

10 A Some do, yes.

11 Q How do they do that?

12 A Usually, they either -- they're either  
13 doing research and they get funding and they sell  
14 something, or they do research for other  
15 companies.

16 Q Do you know if Navidea does research for  
17 other companies?

18 A Not that I'm aware of.

19 Q Okay. And, again, you don't know whether  
20 or not Navidea sells anything?

21 A I don't recall, off the top of my head.

22 Q Okay. So you don't know whether Navidea  
23 actually generate any revenue, do you?

24 MR. KAZAN: Object to the form.

25 THE WITNESS: Again, I don't recall.

1 BY MR. ZIMMER:

2 Q Did you know at one time and you can't  
3 remember?

4 A Yes. I knew at one time.

5 Q Did you know when you wrote your report?

6 A Yes.

7 Q Was it important to the opinions in your  
8 report?

9 A In my report, I was looking strictly at  
10 the stock price and when they could sell the  
11 stock.

12 Q Did you look at all how Navidea's business  
13 history affected its stock price?

14 A I know I looked at that at the time, but I  
15 don't recall the answer.

16 Q Was it relevant to your opinion?

17 A No.

18 Q So your opinion as to when someone might  
19 have sold the stock did not take into account the  
20 nature of Navidea's business or the way that its  
21 business history had affected its share price over  
22 time?

23 MR. KAZAN: Object to the form.

24 THE WITNESS: No.

25

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1 BY MR. ZIMMER:

2 Q No, it did not?

3 A No.

4 Q Okay. Do you know whether announcements  
5 by Navidea about its development programs have  
6 affected its stock price throughout its history?

7 A As I recall, they did, yes.

8 Q And how did they affect the price?

9 A At some point, the price went up.

10 Q Explain what you mean by "at some point."

11 A As I recall, there was a period of time  
12 when Navidea's stock was at its high point, and  
13 Mr. Orr actually selected that period as part of  
14 his damage.

15 Q But are you saying that -- I'm asking if  
16 you're aware of whether announcements about  
17 Navidea's business, over time, affected its stock  
18 price.

19 Are you talking about one specific point  
20 in time?

21 A At one specific time, but I am aware that  
22 they had different announcements and it impacted  
23 the price. Yes. I'm aware of that.

24 Q Okay. Have you researched what happens to  
25 Navidea stock when it makes positive announcements

1 to the market about its development programs?

2 A No.

3 Q And, again, your opinion -- is it based on  
4 the impact of Navidea's public announcements about  
5 its development programs?

6 A No.

7 Q On its stock price?

8 A No.

9 Q Have you looked at any patterns in trading  
10 volume for Navidea over time?

11 A What do you mean?

12 Q Well, have you -- in forming your  
13 opinions, did you investigate any trends over  
14 time -- over the history of Navidea's existence  
15 with respect to its trading volume?

16 A Yes.

17 Q Okay. And did that affect your opinion at  
18 all?

19 A We looked at trading history to determine  
20 the extent of blockage in the market.

21 Q When you say, "blockage," does that go  
22 back to the thinly traded issue?

23 A Well, at some point it's thinly traded,  
24 but at some point it was not.

25 So in order to determine how much they can

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1 trade at any point in time, you need to determine  
2 how much is trading, so we have to look  
3 historically at the trading volumes.

4 Q And what time period did you look at?

5 A We looked at it every -- at the different  
6 periods Mr. Orr suggested they should trade and  
7 the period when I suggested they should trade --  
8 or could trade, I should say.

9 Q Did you notice any trends in the trading  
10 history? I'm sorry.

11 Did you notice any trends in the trading  
12 volume as it relates to the stock price?

13 A Over time, the volume increased, yes.

14 Q Okay. And what about stock price? Did  
15 you notice any effect of trading volume on stock  
16 price over time?

17 A The stock price generally went up as  
18 trading volume went up.

19 Q Okay. On page 7, you start to discuss  
20 this concept of blockage.

21 Can you just give me a description of the  
22 concept of blockage?

23 A Certainly. Blockage is when you have a  
24 large block of stock or a large volume of shares  
25 and the market trades at a lower volume.

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1           So any time you have a large block of  
2   shares, you're going to have to do something to  
3   keep from impacting the stock price when you're  
4   selling those shares.

5           Q     Any time. Has there ever been a time in  
6   the history of -- I guess we'll talk about the New  
7   York Stock Exchange, where sales of large volumes  
8   of shares has not affected the price?

9           A     That, I don't know.

10          Q     Okay. Now, you say on page 7 that you'd  
11   consider a private placement of publicly traded  
12   shares to provide guidance on the reduction in  
13   value resulting from a lack of liquidity.

14                Can you explain how a review of private  
15   placement scenarios could instruct what would  
16   happen to the publicly traded price of shares?

17          A     Sure. We look -- somehow we need to find  
18   public information on how trading restrictions  
19   impact the price of stock.

20                So one of the things we look at are  
21   private placements, and private placements are  
22   private placements of restricted stock. And we  
23   use that data for a number of different purposes  
24   in our firm.

25                So that gives us some market evidence of

1     what a lockup in the stock would be.

2           **Q     Do you assume that these shares would have**  
3     **been sold while they were subject to a lockup?**

4           A     Well, restricted shares can be sold at a  
5     private placement, is my understanding, and  
6     they're sold -- they're sold while they have  
7     restrictions.

8                     So the shares are sold typically at a  
9     discount to reflect the fact that there are  
10    restrictions on the trading.

11          **Q     I thought you said that blockage relates**  
12    **to selling large quantities of stock and its**  
13    **effect on its share price.**

14          A     That's true. It does.

15                     So when you have a large quantity of  
16    stock, you need to dribble that stock out into the  
17    market over time. So that time when it takes you  
18    to dribble that stock out basically becomes a time  
19    when you don't have access to your money.

20                     So it's the same thing where you have a  
21    restriction. You can't trade all of your shares  
22    today, so you have to dribble them out over time.

23                     So what we do is we calculate what is that  
24    time to basically divest that block of shares, and  
25    that becomes -- we consider that a lockup.

1           Q       But the premise of your application of the  
2       private placement information is that selling a  
3       large quantity of shares will necessarily depress  
4       the price of the stock?

5           A       I'm not sure I understand. Can you repeat  
6       that? I'm sorry.

7                   MR. ZIMMER: Is it possible to read  
8       it back?

9                   THE COURT REPORTER: Certainly.  
10                   (The last question was read  
11                   back by the court reporter.)

12                  THE WITNESS: No. The premise of  
13       using private placement data is to have  
14       some sort of market evidence about the  
15       impact of trading restrictions or, to put  
16       it another way, a time to realize  
17       liquidity from the share of stock.

18                  So if you have a large block of  
19       stock, you have to dribble it out. That  
20       takes time. If you have a private  
21       placement, there are restrictions on that  
22       stock. They have to wait for those  
23       restrictions to end.

24       BY MR. ZIMMER:

25           Q       And that was my question.



1           What you just said is that, if you have a  
2   large block of stock, you have to dribble it out  
3   over time.

4           A     Correct.

5           Q     You made an assumption that any time a  
6   large quantity of stock is sold, it depresses the  
7   market price, and you were looking to use the  
8   private placement information to inform what the  
9   impact might be.

10                   MR. KAZAN: Object to the form.

11   BY MR. ZIMMER:

12           Q     Is that correct?

13           A     Yes. We were using the private placement  
14   data for some market evidence of what the  
15   quantity -- or how to quantify that discount or  
16   haircut that someone would take on that stock if  
17   they had to trade it.

18           Q     But the starting point was an assumption  
19   that there had to be some reduction in price.

20                   Correct?

21           A     Yes.

22           Q     And you're just looking for something that  
23   could help you quantify what you assume would be a  
24   necessary reduction in the price. Correct?

25           A     Correct.

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1 MR. KAZAN: Object to the form.

2 THE WITNESS: I'm sorry.

3 BY MR. ZIMMER:

4 Q What made you choose this model, a private  
5 placement model, to try to predict the effect of  
6 high-volume sales on publicly traded shares?

7 A There's not a lot of market evidence out  
8 there, so you can look at other big placements.  
9 That data isn't as good as what we have here in  
10 our private placement model.

11 Q But that data related to publicly traded  
12 shares. Right? Public stock price?

13 A Yes.

14 Q So how could direct data about the public  
15 price of shares be less relevant than information  
16 about private placements that doesn't involve  
17 publicly traded price of the stock?

18 A That's not true. Private placements are  
19 public -- they're public shares that are sold.  
20 They just are restricted shares. So those are  
21 public shares.

22 Q But did you attempt to -- first of all,  
23 did you develop your analysis for this assignment?

24 A What do you mean?

25 Q You refer to a specific methodology you

1      used, the MPI Restricted Stock Study, on page 8.

2                   Was that study conducted for purposes of  
3      this case?

4           A      No.

5           Q      This was kind of an off-the-shelf model  
6      that you had that you decided to use in this case?

7           A      We use this model for -- every time we're  
8      trying to determine a lack of marketability.

9           Q      Okay. Are there other models out there?

10          A      Yes.

11          Q      Did you apply any of the other models in  
12      this case?

13          A      No.

14          Q      Did you do any kind of observation on  
15      actual trading volume of public shares and the  
16      impact on stock price?

17          A      We looked at trading volumes -- we looked  
18      at large blocks. The problem is, there's not a  
19      lot of them out there, so you don't have a lot of  
20      data to go by.

21          Q      Okay. But did that data yield the same  
22      result as your study?

23          A      No. They were much higher.

24          Q      What was much higher?

25          A      If you look at the actual trading of large

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1 blocks of stock, it's much higher.

2 Q What is much higher?

3 A 90 percent.

4 Q No. I don't understand. What is much  
5 higher?

6 A If you look -- if you look at trading  
7 transactions -- if you go back five or ten years  
8 and you look at large blocks of stock, say, you  
9 know, 90 percent or more of the company's  
10 outstanding shares trading in a transaction, you  
11 find the discount applied to that transaction is  
12 about 90 percent.

13 Q Why did you pick 90 percent of a company's  
14 stock being traded in that example you just gave?

15 A Because if you look at -- for example, in  
16 the biggest volume of shares -- if we look at  
17 page 7 of my report, on February 14, 2019, we were  
18 talking about 13,500 shares, and outstanding  
19 shares were only 10 million.

20 Q 13 million -- you're talking about 13 --

21 A 13,500,000. The outstanding shares of the  
22 company were only 10 million. So that's a big  
23 block of the stock.

24 Q But if you're talking about February 14,  
25 2019, that's after August 14, 2018. Right?

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1           A       That's six months later.

2           Q       So how could the total number of shares  
3       outstanding be less than the number that's  
4       outstanding and in Dr. Golberg's possession?

5                   The market was aware of the August 14  
6       agreement.   Correct?

7           A       My understanding is Dr. Golberg's shares  
8       were not registered, so the 10 million is only  
9       registered shares that are trading on the market.

10          Q       Okay.   So the 10 million number that  
11       you're using here is the number of registered  
12       shares?

13          A       Correct.

14          Q       Okay.   Are you aware that the August 14  
15       agreement was announced publicly by Navidea?

16          A       I don't remember if I knew that.

17          Q       Are you aware that the issuance of  
18       shares -- of 13 and a half million shares in  
19       Dr. Golberg's name was publicly disclosed by  
20       Navidea?

21                   MR. KAZAN:   Object to the form.

22                   THE WITNESS:   That's what I recall.

23                   Yes.

24       BY MR. ZIMMER:

25          Q       Is there any reason why the market

1 wouldn't understand that there were, in fact, you  
2 know, 10 -- you know, 23,514,540 shares that could  
3 potentially be traded?

4 A The market -- the actual trade -- the  
5 actively traded shares was 10 million shares.

6 Q I understand. But if someone were looking  
7 to seriously trade in Navidea shares and did any  
8 kind of research on the company, they would easily  
9 identify that, in addition to the 10 million-plus  
10 registered shares, there were at least -- there  
11 may have been others, but there were at least  
12 13,500,000 shares in Dr. Golberg's name.

13 Wouldn't that information be priced into  
14 the market already?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: I can't speculate. I  
17 don't know.

18 BY MR. ZIMMER:

19 Q You don't know?

20 A I don't know.

21 Q Okay. Does the market ever price in  
22 publicly disclosed information?

23 A At times.

24 MR. KAZAN: Object to the form.

25 THE WITNESS: I'm sorry. At times.

1 BY MR. ZIMMER:

2 Q Isn't one of the premises of capitalism  
3 and public securities markets that information is  
4 incorporated efficiently into pricing?

5 A Theoretically, yes.

6 Q Okay. Did you take that into account,  
7 that the market may have already priced in the  
8 fact that it was well aware that all of these  
9 shares were available for trading as of a certain  
10 date?

11 A No.

12 Q You didn't.

13 Are you aware that the August 14 agreement  
14 was actually disclosed in a publicly filed press  
15 release by Navidea so that anyone could look at it  
16 and understand -- or at least read when these  
17 shares would become publicly available?

18 A I don't recall. I may have. I don't  
19 remember.

20 Q Okay. Did you take that into account when  
21 you did your analysis?

22 A No.

23 Q Okay. So does your firm have other  
24 models, other than the MPI Restricted Stock Study?

25 Is that a proprietary model that it's

1      developed?

2           A      That's a proprietary model.   Yes.

3           Q      Has it been peer reviewed?

4           A      Yes.

5           Q      Has it been peer reviewed for the purpose  
6      you used it for here; in other words, using  
7      private placements as a proxy for a large volume  
8      of trading into a publicly traded share?

9           A      We've used this before, yes, for things  
10     for the IRS.   Yes.

11          Q      Has it been peer reviewed for that  
12     purpose?

13          A      I don't know the answer to that.

14          Q      Okay.   Do you know what purpose it was  
15     peer reviewed for?

16                 You know that it was peer reviewed.  
17     Right?   You said that?

18          A      That's what I recall.   I'd have to  
19     double-check that fact, though.

20          Q      So you're not positive it was peer  
21     reviewed?

22          A      I'd have to check that fact.   I know it  
23     was published in an article.

24          Q      Okay.   Can you check that and let me know?

25          A      I'll let you know.   Yes.



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1           Q       Okay. And also let me know whether it was  
2       used in this way, to predict the public price of  
3       shares.

4           A       Okay.

5           Q       Does low trading volume in a stock  
6       necessarily indicate low demand for the stock?

7           A       I don't know the answer to that.

8           Q       Okay. Is it possible that owners of  
9       closely held stock don't often offer the stock for  
10      sale rather than that nobody wants to buy it?

11                   MR. KAZAN: Object to the form.

12                   THE WITNESS: I'm not sure I  
13      understand that question.

14      BY MR. ZIMMER:

15           Q       So if a -- do you know -- did you do any  
16      research into how widely held the Navidea shares  
17      are?

18           A       In terms of the 10 million outstanding?

19           Q       Yes.

20           A       No.

21           Q       Okay. Do you have any idea whether those  
22      shares are owned in large blocks?

23           A       That, I don't know.

24           Q       Do you know whether other nonregistered  
25      shares of Navidea were sold in large blocks?

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1           A       No.

2           Q       Were you aware that certain investors made  
3       large purchases of Navidea shares between  
4       August 14, 2018, and January of 2019?

5           A       Public shares?

6           Q       Restricted shares, I believe.

7           A       No. I'm not aware of that.

8           Q       Okay. Did you review all of Navidea's  
9       public disclosures during the relevant time  
10      period?

11          A       No.

12          Q       Did you review any of them?

13          A       Not that I recall. Maybe very few.

14          Q       Okay. So the question was, If you have a  
15      stock with a low trading volume, is it possible  
16      that people just don't want to sell the stock and  
17      that's why it's not trading as opposed to no one  
18      wants to buy it?

19                   MR. KAZAN: Object to the form.

20                   THE WITNESS: Again, I can't  
21      speculate why a company would have low  
22      trading volume.

23                   MR. ZIMMER: Okay.

24      BY MR. ZIMMER:

25          Q       But will you acknowledge that it's

1 possible that low volume might be explained by a  
2 lack of supply as opposed to a lack of demand?

3 MR. KAZAN: Object to the form.

4 THE WITNESS: Again, it's possible.

5 I can't speculate.

6 BY MR. ZIMMER:

7 Q You don't know?

8 A I don't know.

9 Q Did you do any research into that?

10 A I don't know if there's any way to  
11 research that.

12 Q Okay. Does your firm have any models that  
13 would be able to analyze that?

14 A No.

15 Q Okay. Did you consider trying to analyze  
16 that?

17 A No.

18 Q Okay. So how does -- first of all, do you  
19 know the sample size for your -- I'll call it the  
20 "MPI study," shorthand, and I'll be referring to  
21 the MPI Restricted Stock Study that you referred  
22 to by name in bold on page 8 of the report.

23 But I understand that's what you're  
24 discussing throughout pages 7 and 8. Correct?

25 A Yes.

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1           Q       So do you know the sample size for the MPI  
2       study? How many private placements it considered?

3           A       Not off the top of my head, but I can get  
4       you that information.

5           Q       Okay. Do you know what types of  
6       restricted shares were involved in those private  
7       placements?

8           A       What do you mean?

9           Q       In other words, what types of restrictions  
10      were on the shares?

11          A       They were restrictions that were subject  
12      to Rule 144.

13          Q       Any other restrictions?

14          A       No.

15          Q       Okay. And that was for every share that  
16      was part of these private placements?

17          A       Yes.

18          Q       Do you know the volume of shares relative  
19      to the publicly registered shares in each one of  
20      those private placements?

21          A       No.

22          Q       Were each one of the private placements  
23      involving shares that were, in fact, publicly  
24      traded?

25          A       Yes.

1           Q       Okay. How did your methodology work? I  
2       mean, what is -- what are the steps in the process  
3       of analyzing a private placement and then  
4       determining how that would affect the public price  
5       of the shares?

6           A       What do you mean? For each stock in the  
7       study or in general?

8           Q       The methodology for the study.  
9                    Did you help develop the MPI study?

10          A       No.

11          Q       Okay. Do you understand how it works?

12          A       Yes.

13          Q       Can you explain it?

14          A       So, essentially, we look at a number of  
15       restricted stock transactions. From that  
16       restricted stock, we look at -- they use a  
17       multivariant regression analysis to determine  
18       trends in that data.

19                   And what our study does is, we take those  
20       trends and apply a specific stock data to that  
21       analysis via regression to determine what the  
22       predicted -- basically, you look for a predicted  
23       price against our median price of our study to  
24       determine the discount.

25          Q       Median publicly traded price?

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1           A       So what we do is we try to calculate the  
2       median price at which a transact -- a replacement  
3       transaction would occur based on the regression  
4       analysis of our data points.

5           Q       But when you say, "median price," relative  
6       to what?

7           A       If you look at the median price of our  
8       entire study, and then we determine the specific  
9       price. So if we take our -- the data from a  
10      specific company and apply it to our model, it  
11      comes out with a price at which they predict would  
12      be the price a transaction that particular company  
13      would occur based on our model. When you compare  
14      that against the median price of our model, the  
15      delta is -- determines the discount.

16          Q       Do you know whether Navidea was one of the  
17      companies' shares that were included in your  
18      review?

19          A       I do not.

20          Q       Did you do any kind of an analysis to  
21      compare Navidea's trading history to the trading  
22      history of the shares that were involved in the  
23      study?

24          A       Yes.

25          Q       And how did they compare?

1           A       Well, if you look at -- I don't know about  
2     the trade history basically, but volatility is one  
3     of the --

4           Q       Well, you said, "Yes."

5                   Did you compare the trading history?

6           A       Trading --

7           Q       Because I asked you about trading history  
8     only because you said yes, so --

9           A       Trading history -- we looked at historical  
10    trading history to determine the amount of time it  
11    would take to dribble out the stock.

12          Q       But did you look at Navidea's historical  
13    publicly traded pricing information and compare  
14    that to the companies whose shares were involved  
15    in the private placements that are part of your  
16    study?

17          A       Only to the extent to calculate volatility  
18    of Navidea stock.

19          Q       Okay. So you don't know if in the --  
20    strike that.

21                   Do you know whether any of the stocks that  
22    were the subject of the private placements  
23    incorporated into the MPI study were  
24    biopharmaceutical companies?

25          A       Not off the top of my head, no.

1           Q     Do you know whether any of the stocks that  
2     were included in the private placements that were  
3     part of the MPI study were research and  
4     development companies?

5           A     Not off the top of my head, no.

6           Q     Do you know anything about the types of  
7     companies that were involved in those private  
8     placements?

9           A     It's been a long time since I've looked at  
10    that study, so I can't -- I don't recall.

11          Q     How long?

12          A     When I first got the MPI, which was three  
13    years ago.

14          Q     You didn't revisit in connection with this  
15    report?

16          A     No.

17          Q     Okay.

18                   THE WITNESS: Can we take a  
19    ten-minute break?

20                   MR. ZIMMER: Sure. Absolutely.

21                   (A recess was held off the record.)

22                   MR. ZIMMER: Back on the record.

23    BY MR. ZIMMER:

24          Q     So I'm going to skip around a little bit,  
25    but on page 10, on page 11, you give pretty



1 detailed tables -- on page 10 and 11 of your  
2 report, you give pretty detailed tables about the  
3 blockage discount. And on page 10, there's a  
4 table in there that's "Blockage Discount for  
5 February 14, 2019."

6 And what I'm trying to understand is -- I  
7 mean, can you just explain, in layman's terms,  
8 what it is you look at about the private  
9 placements and how you use that to predict, you  
10 know, outcomes in other contexts?

11 A Sure. So if you look on Table -- on  
12 page 10, there's a table. What we find, over  
13 time, is that there's some drivers to price and  
14 things that matter. One of the biggest things is  
15 volatility.

16 So if you see -- at the top, you'll see  
17 Volatility, and it's really two things:  
18 volatility and time to liquidate. So those two  
19 factors are the two biggest factors.

20 Q Are you talk -- I apologize.

21 Are you talking about the table at the  
22 top? I'm happy to hear your explanation.

23 So you're referring to Table --

24 A No, no, no, no. At the bottom. I'm  
25 sorry. So there's a table at the bottom. If you

1 look, it says, "Log Guideline Company Volatility."

2 Q Where do you see that?

3 A At the very top. It says, "Log Guideline  
4 Company Volatility" at the top.

5 Q Yes.

6 A Median: 25th percentile, 75th percentile.  
7 And then, below that, you'll see Time  
8 Period. So those two pieces are the biggest  
9 driver of a discount. So, essentially, that is  
10 how volatile is the stock, and how long does it  
11 take to trade that stock or get rid of that stock.

12 Q Okay. So explain to me -- so now that I'm  
13 with you, you have -- at the very top of that  
14 chart, below the shaded area, you have Log  
15 Guideline Company Volatility.

16 What does that mean? Is that an  
17 instruction to the user to log the volatility, or  
18 what does "log guideline" mean?

19 A "Log" is a logarithm, so basically you put  
20 everything in logarithm to do the calculations,  
21 but if you look at this -- do you see the  
22 82.2 percent?

23 Q Yes.

24 A That is the volatility of Navidea stock at  
25 that time.

1 Q Oh, at what time? Over what time period?

2 A At the -- we go back five years, but if  
3 you look at as of February 14, 2019, if you take a  
4 five-year median volatility, it's 82.2 percent.

5 So this stock has a very high volatility.

6 Q Okay. And what five-year period?

7 Are you talking about going back from the  
8 date of your report or going back from February  
9 14, 2019?

10 A February 14, 2019.

11 Q Going back five years?

12 A Yes.

13 Q Okay. Do you know whether Navidea's  
14 business changed over that time period?

15 A Over the last previous five years?

16 Q Yes.

17 A I'm sure it did.

18 Q Okay. Did you look into that at all?

19 A No.

20 Q Did you do anything to determine whether  
21 that historical volatility might have changed as a  
22 result of business changes at the company?

23 A We look at volatility usually one year,  
24 five years. We look at it over different periods  
25 of time.

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1           Q       Okay.

2           A       So what we found is the five year was  
3       actually lower than the one year.

4           Q       Okay. And you use five year?

5           A       We typically look back five years.

6           Q       Okay. All right. Now, when you say,  
7       "Market Cap Time Period" -- well, explain this to  
8       me: So now you say -- in the Comments section, it  
9       says, "We default to the volatility of Navidea  
10      stock." What does that indicate?

11          A       We used Navidea's stock volatility.

12          Q       Okay. What else could you possibly use?

13          A       In our -- a lot of the work we do is  
14      private companies.

15          Q       Okay.

16          A       So in private companies, you do not have a  
17      stock price, so you have to look at the market in  
18      general. So typically what we'll do is we'll go  
19      look at other companies in that market and use  
20      that volatility.

21                   But in this case, we have Navidea stock.  
22      So we have their volatility, so we use that  
23      volatility.

24          Q       So the private placements involved in the  
25      MPI study are typically nonpublicly traded shares?

1           A       No. They're publicly traded shares. We  
2       apply that data to nonpublicly traded companies.

3           Q       Oh, I see. So if you were going to use  
4       this in another context and that context involved  
5       a nonpublicly traded company, you would use  
6       some -- you wouldn't be able to use the actual  
7       trading volatility?

8           A       That's correct.

9           Q       You'd use a proxy for that?

10          A       That's correct.

11          Q       But here you use the actual Navidea.  
12       Okay.

13                   Now, there is a listing for 25th  
14       percentile, 75th percentile, and I see -- you  
15       know, there's NA and 0 percent. It doesn't seem  
16       to be used here.

17                   Why is that -- why it is there, and why  
18       isn't it used?

19          A       We used the median because that's, you  
20       know -- we typically always use the median.  
21       Sometimes you use the 25 or 75 percentile, but in  
22       this case, we just used the median because we used  
23       the actual stock.

24          Q       Why would you use the 25th or 75th  
25       percentile?

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1           A       If you were doing a private company, you  
2       would look at it versus the market, and you may  
3       decide that, hey, it's lower than the market or  
4       higher than the market. Typically, we always use  
5       the median.

6           Q       Okay. And then the Log Market Cap Time  
7       Period, it says, "We use Time Period I, as  
8       closely-held securities are most similar to  
9       pre-1990 restricted transactions with regard to  
10      the potential holding period."

11                   What does that mean?

12          A       So if you look at Rule 144 over time, the  
13      holding period changed. So we break it down into  
14      four time periods: Period I is pre-1990, which  
15      was a two-year holding period plus a piggyback  
16      provision. So if you sold your stock --  
17      restricted stock during the restriction period,  
18      basically the clock would start over, so it could  
19      be longer than the two-year restriction.

20                   After 1990, that restriction went down to  
21      two years. They took away the piggyback  
22      provision.

23                   It was in '96, I think -- at some point  
24      they made it a one-year provision. And then, more  
25      recently, they made it a six-month provision,

1 which is what it is currently.

2 So the six-month provision is Time Period  
3 IV. The one-year provision is Time Period III.  
4 The two-year provision without a piggyback is Time  
5 Period II. And Period I is the provision where  
6 it's two years, plus there's a -- there could be a  
7 piggyback provision where, if you sell your stock,  
8 there's additional time.

9 Q Is this what's reflected on page 9 in the  
10 table: pre-1990, 1990 to 1997?

11 A Exactly, yes.

12 Q Some of those time frames are a little  
13 different from what you said.

14 A I should have referred to the chart. I  
15 apologize.

16 Q Okay. This says, "Use Time Period I,"  
17 which is pre-1990, but obviously, we're talking  
18 about shares that you're assuming were issued in  
19 August of 2018.

20 Why would you use the pre-1990 time period  
21 and -- well, let me just strike that because I  
22 have a question I want to ask first.

23 Time Period IV in the chart -- it says  
24 "2008." The rest of them are, you know, time  
25 periods. Does Time Period IV actually cover 2008

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1     onward?

2           A     Correct.   Yes.

3           Q     Okay.   So you're looking at shares that  
4     were assumed to be issued in August of 2018.

5                     Right?

6           A     Yes.

7           Q     So why would you use a pre-1990 time  
8     period?   I don't understand -- first -- strike  
9     that.

10                    First, explain to me what the time period  
11    refers to.   How is that relevant to the chart on  
12    page 10?   Does that refer to the holding period,  
13    the "time period"?

14           A     The time period is the holding -- we use  
15    the time period to estimate a holding period.  
16    So -- let me go back.

17                    So the first thing we do is figure out, if  
18    they dribbled out the stock, how long it would  
19    take them to dribble it out to not impact the  
20    price of the stock.   And, from that, we come up  
21    with a number.

22                    So, for example, in the first case, if you  
23    look at the top of page 10, we assume it was going  
24    to be 53 quarters to sell that block of stock if  
25    we dribbled it out over time.



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1 Q But when you say it was going to be  
2 53 quarters, do you assume that and then do  
3 something with your model, or is your model  
4 designed to come up with that number?

5 A No. We calculate that number and then put  
6 that result into our model.

7 Q So how do you get to the 53-quarter  
8 number? How do you assume -- you said you assume  
9 that. How do you arrive at that number?

10 A So if we look at daily trading volume --  
11 so at the top of page 10, you'll see it says,  
12 "Daily Trading Volume 27,156."

13 Q Right.

14 A We assume you can trade 15 percent of the  
15 daily trading volume at any point in time and not  
16 impact the price.

17 Q Okay. But why wouldn't you be able to  
18 trade 100 percent of the daily trading volume and  
19 not impact the price if the price is based on the  
20 sale of 100 percent of the shares sold on that  
21 day?

22 A What we're saying is if you put an  
23 additional 100 percent of the shares in the  
24 market, that would impact the price.

25 Q So you're effectively saying 115 percent

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**1 trading volume?**

2 A You can do 115 percent trading volume on  
3 that day. You can do 27,000 plus another 4,000  
4 shares and not impact the price.

**5 Q And how did you come up with the**  
**6 15 percent?**

7 A Our firm, based on what we do -- because  
8 we do a number of these studies for a number of  
9 purposes. We talk to banks, people who are  
10 trading, and we ask them, "What's your view? How  
11 much can you put in the market?" And that's the  
12 general consensus we found, is between 10 and  
13 15 percent.

**14 Q You say "we." You mean people that work**  
**15 for MPI?**

16 A Yes.

**17 Q Okay. So what was the process you used?**  
**18 Did you poll people in the office?**

19 A I talked to a number of the people in the  
20 office, I've talked to bankers myself, and I've  
21 also talked to a number of the people in the  
22 office, saying, "What's your experience?"

23 And they said, basically, "We talked to a  
24 number people in the industry, and this is what we  
25 found."

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1           Q       And that was in connection with this  
2       engagement, or that's a number you generally use?

3           A       That's a number we generally use.

4           Q       Okay. Did you look at all at Navidea's  
5       trading volume history versus its stock price  
6       history to determine whether the 15 percent was  
7       appropriate to apply to Navidea?

8           A       I did look at their trading history and  
9       their stock price history, and I didn't see  
10      anything that would make me disbelieve the  
11      15 percent.

12          Q       What were you looking for to see that  
13      might have led you to believe that the 15 percent  
14      would not be appropriate?

15          A       I mean, 15 percent -- generally speaking,  
16      15 percent is the number we use because we assume  
17      that number will not impact the price. So there  
18      could be days when they trade more and it does  
19      impact the price a little bit. You just don't  
20      know. So we try to use a market -- a general  
21      market guideline, which is the 15 percent.

22          Q       Is the general market guideline published  
23      somewhere?

24          A       No.

25          Q       Did you use some kind of a study to arrive

1 at it, or is it anecdotal input from different  
2 sources?

3 A It's just anecdotal input from various  
4 banks that we talked to.

5 Q Do you know if any of them were familiar  
6 with Navidea's trading history?

7 A No.

8 Q And, in fact, you didn't ask anyone,  
9 specifically for this engagement, about this.  
10 Right?

11 You used the number that's an in-house  
12 number that you use across the board?

13 A It's a number we've derived over a number  
14 of years of conversations with traders.

15 Q But you use it across the board on your  
16 engagements?

17 A Yes.

18 Q Okay. And are all companies -- strike  
19 that.

20 Is the impact of trading volume on share  
21 price uniform across all publicly traded  
22 companies?

23 A No.

24 Q Okay. So in the chart on page 10 --  
25 well, I will call the -- what do you want to call

1 it? Just so we're talking about the same thing.

2 At the top, there's Daily Trading Volume,  
3 et cetera, and that looks like maybe a table?

4 A Let's call it "top" and "bottom." That's  
5 easier.

6 Q Okay. At the bottom -- the bottom table  
7 or chart, you know, you say, you know, sometimes  
8 you use 25th percentile; sometimes you use 75th  
9 percentile.

10 But in this case, Navidea was a publicly  
11 traded company, so you could use its actual  
12 volatility. You didn't have to assume anything.

13 Right?

14 A That's correct. Yes.

15 Q Okay. And then, for the time period --  
16 explain to me again why you think that a pre-1990  
17 time period is most relevant to shares issued in  
18 2018.

19 A Certainly. If you go look at the time  
20 period -- that period of time, the market is when  
21 shares had the largest lockup or the largest  
22 period of time when they couldn't trade them.

23 Q Right.

24 A So right now, it's only six months.

25 Q Right.

1           A       But these shares were locked up longer  
2       than this.

3           **Q       Which shares?**

4           A       Well, we calculated -- for example, at the  
5       top of page 10, we calculated 53 quarters to  
6       dribble out the Navidea shares at that point in  
7       time, which was -- I should have had a header on  
8       this. That's the February 14.

9                   So as of February 14, to dribble out  
10      13,500,000 shares, it would have taken them  
11      53 quarters.

12          **Q       Well, you assumed it would take them**  
13      **53 quarters because you applied a 15 percent**  
14      **number that you apply across the board to all of**  
15      **your engagements at this time. Right?**

16          A       That's correct. Yes.

17          **Q       Regardless of the industry that the**  
18      **company is in?**

19          A       Correct.

20          **Q       Regardless of the company's prior trading**  
21      **history?**

22          A       Correct.

23          **Q       Okay. How do you justify that?**

24          A       That's the number -- that's the number  
25      we've been using. That's what we understand is

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1 the threshold to not impact the stock price.

2 Q But you're saying that, in every single  
3 publicly traded company, if they traded  
4 16 percent, it would decrease it, and if they only  
5 traded 14 percent, it wouldn't?

6 MR. KAZAN: Object to form.

7 BY MR. ZIMMER:

8 Q What basis do you have to say that this  
9 number is appropriate for every publicly traded  
10 stock?

11 A I mean, every publicly traded stock is  
12 going to have its individual characteristics;  
13 however, as a general rule, we use -- we use the  
14 15 percent. There's no way to know what it would  
15 be otherwise.

16 Q Well, you can argue that you should strike  
17 the word "otherwise" from your statement,  
18 but . . .

19 The 15 percent, to be clear, is not an  
20 engagement-specific number. Correct?

21 A That's correct.

22 MR. KAZAN: Object to the form.

23 BY MR. ZIMMER:

24 Q And it's not a company-specific number.  
25 Right?

1 A Correct.

2 Q And it's not investor-specific; in other  
3 words, the person holding the shares and how they  
4 might go about trading the shares.

5 Right?

6 It's not related to that? Right?

7 It's not individualized to any person.

8 Right?

9 A Not individualized to any person. That's  
10 correct.

11 Q Okay. And is it individualized to any  
12 type of restrictions?

13 A No.

14 Q Okay. And it's not based on any  
15 methodology. It's based on anecdotal inquiries to  
16 certain people inside and outside of your firm.

17 Correct?

18 MR. KAZAN: Object to form.

19 THE WITNESS: It's based on inquiries  
20 to trading people in the trading industry.

21 BY MR. ZIMMER:

22 Q Do you know who?

23 A I don't know.

24 Q Is there a list somewhere?

25 A Not that I'm aware of. I don't know.



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1           Q       Okay. And do you know if those people  
2       have experience in the biopharmaceutical area?

3           A       That, I don't know.

4           Q       Do you know whether they have experience  
5       in trading a startup -- sorry, a research and  
6       development company?

7           A       I don't know.

8           Q       Do you know anything about the people that  
9       these numbers came from?

10          A       No.

11          Q       And did you talk to any of them yourself?

12          A       No.

13          Q       And how long has the 15 percent number  
14       been used, to the best of your knowledge?

15          A       For years. I don't know that.

16          Q       Five years? Ten years? Two years?

17          A       Probably at least five, maybe ten years.

18          Q       And is there any chance that the market  
19       principles or, you know, trading concepts may have  
20       changed over that period of time?

21                   MR. KAZAN: Object to the form.

22                   THE WITNESS: It's possible.

23       BY MR. ZIMMER:

24          Q       Do you know whether anything's been done  
25       to update that number?

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1 A Not that I'm aware of, no.

2 Q Okay. So now, when you go down to the  
3 table at the bottom of page 10, you said, you  
4 know -- for example, for the volatility, there's a  
5 median, there's a 25th percentile, there's a 75th  
6 percentile.

7 Am I correct in my understanding that you  
8 were saying that, for nonpublicly traded  
9 companies, you might make an adjustment to the  
10 25th percentile or the 75th percentile based on  
11 the characteristics of the company?

12 A That's correct. Yes.

13 Q Okay. But because Navidea was a publicly  
14 traded company, you went with the actual data  
15 that's available -- right? -- on Navidea and went  
16 with the median volatility for Navidea. Correct?

17 A That's correct. Yes.

18 Q Is there a reason why you didn't do the  
19 same thing: go back and calculate a number  
20 different than the 15 percent you've been using  
21 for the last ten years -- since you had actual  
22 market data on Navidea -- for that purpose too?

23 MR. KAZAN: Object to the form.

24 THE WITNESS: No.

25

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1 BY MR. ZIMMER:

2 Q Could it have been done?

3 A I don't know.

4 Q Could you have at least asked people if  
5 they were familiar with Navidea or asked them to  
6 familiarize themselves with that and give you  
7 their opinion as to what the daily trading  
8 percentage that would affect stock price would be?

9 A We didn't -- we didn't look at that. I  
10 don't know if we could or not.

11 Q You don't know whether you could have  
12 asked traders to --

13 A Asked traders?

14 Q Well, you said you spoke to traders --  
15 well, I'm not trying to put words in your mouth,  
16 and it will be clear what you said.

17 My understanding of what you said was  
18 that, at some point in time, possibly up to ten  
19 years ago, people at your firm spoke to stock  
20 traders to get their input to determine what the  
21 percentage of daily trade in the top chart on  
22 page 10 should be, and that number is intended to  
23 represent the maximum additional volume of shares  
24 that can be sold on any given day without  
25 affect -- downwardly affecting stock price.

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1                   Is that correct?

2           A       That's correct.

3           Q       Did you go to any traders for purposes of  
4       this engagement and ask them whether they were  
5       familiar with Navidea or ask them to familiarize  
6       themselves with Navidea and let you know if there  
7       was a better estimate than the 15 percent?

8           A       No.

9           Q       Okay. Now, if I understand correctly,  
10       using that 15 percent number, you came up with  
11       53 quarters to sell the 13,500,000-share block of  
12       Navidea. Correct?

13          A       Correct.

14          Q       And that, and that alone, is what leads  
15       you to select Time Period I. Right?

16                   Because you're saying that, Our estimate  
17       is that it would take a really long time, so  
18       therefore, we look at the time period with the  
19       longest restrictions. Right?

20          A       Correct.

21          Q       Was there anything about the MPI study  
22       that indicated that the pre-1990 would be  
23       relevant, other than your assumption of 15 percent  
24       that leads to a 53-quarter time period?

25          A       No.

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1 Q Okay. So there's nothing about the  
2 restrictions on the actual shares that were issued  
3 in Dr. Golberg's name that led you to use Time  
4 Period I?

5 A No.

6 Q And there was nothing about Navidea's  
7 trading history that led you to use Time Period I?

8 A No.

9 Q Okay. Is your study broken down by  
10 these -- I see five time periods here in the chart  
11 on the bottom of page 10 and only four in the  
12 table on page 9 that talks about time periods.

13 I see Time Period 1, 2, 3, 4, and here I  
14 see Time Periods Roman numeral I, Roman numeral  
15 II, Roman numeral III -- oh, I'm sorry. My  
16 apologies. There's four. Strike that.

17 Is it the case -- I'm just trying to  
18 understand -- that, using the MPI model, you can  
19 segregate the time periods: use only the Time  
20 Period I information or use only the Time Period  
21 II or Time Period III?

22 A Yes.

23 Q Is that how it works?

24 A Yes.

25 Q Are you able to use more than one time

1 period, or would you have to do that separately  
2 and then blend the results?

3 A You have to use one period at a time.

4 Q Okay. And this is really sort of like  
5 a -- for lack of a better analogy, like a formula  
6 in Excel or something. Right?

7 You put certain inputs in and numbers come  
8 out the back end. Correct?

9 A Yes. Correct.

10 Q Are you familiar with all of the different  
11 calculations that are involved?

12 A Yeah. I have gone through the  
13 calculations. Yes.

14 Q Okay. Did you double-check -- at least  
15 double-check the math on this one, so to say?

16 You checked every calculation in each one  
17 of these tables to make sure that there was no  
18 glitch in the system?

19 A Our calculations were pretty much fixed,  
20 so you can't really change the calculations.

21 Q Okay. But you understand what each and  
22 every calculation is?

23 A Yes.

24 Q So the sole driver of the use of Time  
25 Period I was your 15 percent assumption?

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1           A       Correct.

2           Q       Okay. And you never did an evaluation  
3       using Time Period IV, which is actually the time  
4       period in which the actual shares at issue here  
5       were issued in Dr. Golberg's name. Correct?

6           A       Not for February 14, 2019.

7           Q       Okay. Why not?

8           A       Because we determined it would take  
9       53 quarters to liquidate those shares at the end  
10      of the restriction period.

11          Q       Okay. Are the restrictions on shares in  
12      the MPI study the driver of the daily trading  
13      volume information, or is that completely  
14      independent?

15          A       What do you mean? The 15 percent?

16          Q       At the top of page 10, you do calculations  
17      to determine how long it would take to sell  
18      something. Correct?

19          A       Correct.

20          Q       A block of shares.

21                   In the MPI study, what drives the amount  
22      of time it would take -- do you do the same  
23      assumption every time you apply the MPI model, the  
24      15 percent?

25          A       I'm not sure what you mean.

1           Q     I may not be sure either, but you're the  
2     expert.

3                     The private placement model, the MPI  
4     study -- you said it involves both public and  
5     privately traded companies?

6           A     The MPI study is only publicly traded  
7     stocks.

8           Q     The private placements are only of  
9     publicly traded stocks?

10          A     Correct.

11          Q     Okay. Is the 15 percent of daily trade  
12     volume assumption part of the MPI study?

13          A     No.

14          Q     It's not. So what does the MPI study do?

15          A     The MPI study is -- what it does is, we  
16     have to tell it what our time frame is, what our  
17     lockup period is, and from that data, we can  
18     determine the appropriate discount.

19          Q     So what you do is, you use the MPI study,  
20     which is, to some extent, empirical, and it tells  
21     you that shares that were locked up under the  
22     pre-1990 regime -- this is the impact on price.

23                     Right?

24          A     Correct.

25          Q     Or, you know, the post-2008, this is the



1 impact on the stock. Right?

2 A Correct.

3 Q But the input for the analysis has nothing  
4 to do with the MPI study. Right?

5 The input for the analysis is strictly the  
6 15 percent assumption. Right?

7 A Correct.

8 Q And that's an across-the-board assumption  
9 for every single publicly traded share that your  
10 company's looked at for the last ten years?

11 A We use between 10 and 15 percent as a  
12 general rule. Yes.

13 Q Okay. So as far as arriving at the  
14 15 percent, that's strictly based on discussions  
15 with traders' internal decision that's made at  
16 your firm. Right?

17 A Correct.

18 Q Okay. What are the -- explain to me how  
19 you deal, then, with the variables.

20 I now understand that the volatility --  
21 well, explain to me this: If the MPI model deals  
22 only with publicly traded shares, then why would  
23 you ever use the 25th percentile as something --  
24 in other words, why would you ever estimate  
25 volatility in the MPI study if it deals only with

1 publicly traded shares?

2 Why wouldn't you always use the actual  
3 volatility of the publicly traded stock?

4 A Because when we're using this study, we're  
5 not -- typically not valuing publicly traded  
6 shares. We're typically valuing privately traded  
7 shares.

8 Q Okay.

9 A So at that point you do not have a  
10 volatility number.

11 Q So the data set that you used to perform  
12 the MPI study were private placements of publicly  
13 traded shares?

14 A Correct.

15 Q But the application of the MPI study is  
16 typically to determine the impact on large-volume  
17 trades on nonpublicly traded shares?

18 A Or any trades on nonpublic shares.

19 Q But typically used to value nonpublicly  
20 traded shares?

21 A Yes.

22 Q So why did you use it to value publicly  
23 traded shares here?

24 A Because it's data generated from publicly  
25 traded transactions. This is a publicly traded

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1 stock, and we know how long it would -- we know  
2 the period of time it would take to sell. We have  
3 market evidence of what the discount would  
4 potentially be.

5 Q Well, you have market discount based  
6 on -- strike that.

7 You have market information about  
8 discounts that occurred on nonpublicly traded  
9 shares?

10 Wait a minute. Hold on. Strike all that.

11 Why would you use a model, that's used by  
12 you almost exclusively, to try to determine the  
13 impact of trading volume on nonpublicly traded  
14 shares or the time period it would take to sell  
15 nonpublicly traded shares without impacting price?

16 Well -- and I apologize. I'm trying to  
17 learn this as I go. So strike all that.

18 Is the purpose of the MPI model to  
19 determine how much you could sell without  
20 impacting the market or what the market impact  
21 would be of a certain percentage of sale?

22 A The MPI study -- let's back up.

23 So the bulk of our business is valuing  
24 privately held companies. And so that's why we  
25 have this particular model, because we have market

1 evidence that tells us what the market does  
2 over -- when there's a certain restriction period  
3 or a period when you can't sell the stock.

4 So if you're a private company and you  
5 want to sell your stock, you can't just go down  
6 and sell it. You have to go through a process to  
7 do that.

8 Q Right.

9 A Part of it is dealing with brokers,  
10 finding a buyer, and effectuating the sale.

11 The other part of it is, you've got to do  
12 some other work upfront: make it ready, you  
13 know, clean up the books, et cetera, et cetera.

14 So we use this study to say, Okay.  
15 There's a time period between when you want to  
16 sell and when you can actually sell, and this  
17 model gives us public data of what the impact of  
18 that time period is.

19 Q But the time period in -- you're trying to  
20 figure out what the impact is of the delay in, you  
21 know, truing up the books and preparing it for  
22 sale. Is that what you're saying?

23 A I'm saying, from the day I want to sell  
24 the business to the day I actually sell the  
25 business, there's a time period.

1 Q Right.

2 A It's usually -- it could be a couple  
3 years. So I'm saying, I need to -- if I want to  
4 sell my stock today or if I'm valuing it as of  
5 today, I know I can't sell it in the public market  
6 today. It's going to take me time to sell this  
7 company.

8 Q But it's not going to take you time to  
9 sell it because of concerns that sale of any  
10 volume or any percentage of the company will  
11 effect the market price. Right?

12 There are practical considerations. There  
13 are operational things that need to be done.

14 Is that right?

15 A In the case of a private company, that's  
16 correct.

17 Q Okay. What is the Log Risk Fee Rate in  
18 the table on the bottom of page 10?

19 What does that represent?

20 A Where are you?

21 Q Just below the Log Market Cap Time Period  
22 entries, in that table at the bottom of page 10,  
23 it says, in the variables, it's a "Log Risk Free  
24 Rate."

25 A Oh.

1           **Q     What's a "log risk"?**

2           A     That's the risk-free rate of a 30-year  
3     treasury -- U.S. treasury rate, which we assume is  
4     a 30-year treasury.

5           **Q     Okay. Does that rate fluctuate over time?**

6           A     Yes.

7           **Q     Okay. And the one you used here was as of**  
8     **February 14, 2019?**

9           A     We normalize that to 3 percent because, if  
10    you look at rates right now, they're very low.

11                So at that time, in February of '19, the  
12    rates were really low. So we basically normalize  
13    it to 3 percent, which is basically the historical  
14    long-term rate.

15           **Q     Well, okay. But why would you normalize**  
16     **it and not use the actual rate?**

17           A     Because the rate, at the time, was  
18    extremely low. And going forward, if you're  
19    looking at going out 53 quarters, which is  
20    13 years, that rate could change over time. So  
21    it's going to revert back.

22           **Q     But has the rate been historically low**  
23     **since in or about 2009?**

24           A     It's been low since '09, and it's slightly  
25    lower today than 3 percent.

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1 Q Okay.

2 A It's about 2.8 percent.

3 Q And just about every day we hear news  
4 about the Federal Reserve, and that's what  
5 typically drives this. Right?

6 It's understood that the Federal Reserve  
7 is keeping that rate low. Correct?

8 MR. KAZAN: Object to the form.

9 THE WITNESS: In the short term, yes.

10 BY MR. ZIMMER:

11 Q Well, the short term, so far, has been  
12 from 2009 to 2021. Right?

13 A That's correct. It's been ten years.

14 Q And it's been going down still. Right?

15 A It's actually gone up a bit.

16 Q Well, I'm saying, it's still at  
17 historically low rates, in your perspective.

18 Correct?

19 A That's correct. Yes.

20 Q Okay. Any inside knowledge, that I could  
21 use to finally retire, about what the fed is  
22 going to do with interest rates over the next 10  
23 to 53 quarters?

24 A You look like you have a long time to  
25 retire. No. I wish I did because I'd retire.

1           Q       Okay. So you really have -- so you're  
2       using a rate -- a pre-2009 rate, because the rate  
3       has been historically low for the last 12 years  
4       and you have no information about whether it will  
5       go up or not, but most of the news is that it's  
6       unlikely that the fed is going to do anything to  
7       precipitously raise rates in the short to medium  
8       term. Correct?

9                   That's what they say at every quarterly  
10      meeting. Correct?

11                   MR. KAZAN: Object to the form.

12                   THE WITNESS: Again, that's the short  
13      term. We're looking at the long-term rate  
14      and the long term -- over the long term,  
15      things tends to revert back to the mean,  
16      which is 3 percent.

17      BY MR. ZIMMER:

18           Q       Okay. But you didn't take into account  
19      the lower rate; you just used what you consider  
20      the historical rate of 3. Right?

21                   You didn't adjust it for the 12 years it's  
22      already been at about 1 percent. It was at 0 at  
23      one point, wasn't it?

24           A       I don't know if it was quite that low, but  
25      it was --



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1 Q It was close to zero.

2 A -- it was close. In that range.

3 Q You didn't account for that as part of  
4 history?

5 A No.

6 Q The 12-year recent history isn't part of  
7 the historical rates that you used to come up with  
8 the 3 percent. Right?

9 A No. We assume that it reverts to the  
10 mean.

11 Q Would a higher or lower percentage affect  
12 the outcome of the model?

13 A A lower rate would make the discount  
14 higher.

15 Q Okay. Now, the next thing is S&P 500:  
16 12-month change.

17 Is that just what it looks like? Is that  
18 the -- well, just me tell me what it is.

19 A That's the actual change in the S&P 500 as  
20 of February 14.

21 Q The 12-month period -- what makes you use  
22 a 12-month period there? Do you know?

23 A That's what our model looks at. So, in  
24 our model, we look at what date a stock price -- a  
25 stock transaction occurred on a restricted stock

1 and look at the 12-month change at that point.

2 Q Okay. But you're using Time Period I,  
3 which is, at minimum, a three-year holding period.

4 Right?

5 A Yes.

6 Q And you're looking at the 53-quarter  
7 assumption. Right?

8 A Yes.

9 Q So why use only a 12-month S&P rate  
10 change?

11 A Because that's what we calculate in our  
12 model. Like I said, we look at certain  
13 attributes, and we look at, at that time when a  
14 transaction occurred, what was the 12-month change  
15 in the S&P market.

16 Q So that's just something that's -- it's  
17 done that way because it's done that way? You  
18 can't explain why?

19 Does it ever change -- strike that.

20 Does it ever -- does the -- well, let me  
21 take a step back.

22 Does the risk-free rate -- has that ever  
23 changed while you've been at MPI? The assumption  
24 that you used for that, the 3 percent?

25 MR. KAZAN: Object to the form.

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1 THE WITNESS: No.

2 BY MR. ZIMMER:

3 Q To the best of your knowledge --

4 A We've always normalized at the 3 percent.

5 Q And the S&P, have you ever used anything  
6 other than a 12-month period?

7 A No.

8 Q Okay.

9 A That's the way the model calculates it.

10 Q Well, I understand that's what's used.  
11 How was it determined to use a 12-month  
12 rate?

13 A A 12-month period.

14 Q The 12-month period.

15 A That was determined when they did the  
16 model.

17 Q Okay. And did you help create this model?

18 A No.

19 Q Okay. Is this model ever reevaluated  
20 internally, or is it just simply applied?

21 A We update it from time to time. I don't  
22 recall when it was last updated.

23 Q Okay. Do you recall what was updated?

24 A Usually just the underlying data. The  
25 methodology hasn't changed.

1 Q Okay. And what about these assumptions?

2 A What do you mean? Using a one year

3 versus --

4 Q One year --

5 A Yes. That does not change.

6 Q -- and the three? Okay.

7 Now, Price to Book Dummy I, Price to Book

8 Dummy II, what does that refer to?

9 A It looks at the value of the company  
10 versus the book value of the stock. So we assume  
11 it's 1 for most companies, especially nonoperating  
12 companies.

13 Q Well, you assume it's 1?

14 A Typically, yes.

15 Q Now, what does Coefficients mean in the  
16 header here?

17 A Coefficients is just the statistical  
18 calculation based on the log, which is the --  
19 there's three columns: Base Value, and then you  
20 basically turn that into a log and then calculate  
21 the coefficient of the log.

22 Q Okay. Why would -- you're saying that  
23 this is intended to reflect the actual value.

24 What value? Book value? Market value?

25 You said it was intended to reflect the --

1 is it a ratio of the book value to the market  
2 price?

3 A No. What this model does is, it predicts  
4 the price of a private placement transaction.

5 Q I'm not -- I appreciate that. I'm asking  
6 you about the model. I'm asking about this line  
7 or these -- this set of lines: Price to Book  
8 Dummy I, Price to Book Dummy II.

9 I assume those are separate from log  
10 closing price. Is that correct? That these two  
11 represent the same variable log to book?

12 A Yes.

13 Q And is that intended to represent the  
14 actual value versus the market cap, for lack of a  
15 better expression? Is that what you said?

16 A Yes. Basically, yes.

17 Q Okay. So, first of all, what versus  
18 market cap? Is it book value? Is it --

19 A It's book value.

20 Q -- market value? Is it a valuation  
21 number?

22 A Well, market cap is market value of the  
23 whole stock.

24 Q Right. In other words, you don't go in  
25 and kick the tires and do an actual valuation of

1 all assets and such, do you, for that?

2 A No.

3 Q Okay. And you don't do -- you don't know  
4 the actual book value, do you?

5 Well, let me put it this way: For a  
6 publicly traded company like Navidea that  
7 publishes financial statements, reviewed on a  
8 quarterly basis, and audited on an annual basis,  
9 could you determine the book value?

10 A Yes.

11 Q Okay. Did you?

12 A I do recall looking at it. I don't  
13 remember what the results were.

14 Q Okay. Does your -- did you compare the  
15 book value to the market cap to determine the  
16 actual value? To determine this variable, I  
17 should say.

18 A No.

19 Q You just assumed 1?

20 A Assumed 1, yes.

21 Q Okay. And did you take into account that  
22 there are a large percentage of the Navidea shares  
23 are not registered shares?

24 In other words, the market cap doesn't  
25 capture the entire ownership of the company.

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1                   Did you take that into account?

2                   MR. KAZAN: Object to the form.

3                   THE WITNESS: No.

4 BY MR. ZIMMER:

5           Q       But that would be correct. Right?

6                   In a company where there are a lot of  
7 nonregistered shares that have been sold, that the  
8 market cap wouldn't be a reasonable reflection of  
9 the total value of the company. Right?

10                  Because everyone knows that there are  
11 these other percentages of the company held by  
12 other people that aren't reflected in the market  
13 cap. Correct?

14                  MR. KAZAN: Object to the form.

15                  THE WITNESS: The market cap is just  
16 the value of the shares traded on the  
17 exchange.

18                  MR. ZIMMER: Right.

19 BY MR. ZIMMER:

20           Q       So if that is less than 100 percent, then  
21 that does not relate to the actual total value of  
22 the company. Right?

23                  MR. KAZAN: Objection to the form.

24                  THE WITNESS: Correct.

25                  MR. ZIMMER: Okay.

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1 BY MR. ZIMMER:

2 Q But you just used the 1 assumption. You  
3 didn't do anything to determine the percentage of  
4 outstanding stock that is not publicly traded?

5 A No, we did not.

6 Q Okay. And you didn't use the publicly  
7 disclosed financial statements to determine the  
8 actual value?

9 A Correct.

10 Q And you didn't, obviously, compare that  
11 to even the market cap. Right? You just used  
12 the 1?

13 A Correct. Yes.

14 Q Okay. Log Closing Price, what does that  
15 mean, the next one?

16 A The average price of our study was \$7.50,  
17 so that's our target: 7.50. So we'd compare our  
18 results to the 7.50 number.

19 Q So the 7.50 represents the average price  
20 of the publicly traded shares that were the  
21 subject of the private placements that were  
22 considered in the MPI study?

23 A Yes.

24 Q Okay. And, again, you have no idea what  
25 kind of companies were involved. Correct?



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1 A Correct.

2 Q If they had any relation to Navidea's  
3 financial situation or market situation. Right?

4 A Correct.

5 Q Okay. So why do you use -- how is that  
6 number used?

7 A So, basically, we come down -- if you look  
8 at the bottom, it says, "Predicted Price."

9 Q Right.

10 A We compared the predicted price to the  
11 7.50, and the difference is the discount.

12 Q But how do you get the predicted price?  
13 Is that the output of the model?

14 A Correct. Yes, it is.

15 Q And is the 7.50 one of the inputs into the  
16 model?

17 A Yes, it is.

18 Q So how does the 7.50 contribute to the  
19 predicted price?

20 A It's part of the calculation.

21 Q Do you know how that specific line  
22 contributes to the predicted price?

23 A It's all -- basically, it's -- all these  
24 factors go into the predicted price.

25 Q But do you know how to trace that

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1 through -- what the impact of the predicted  
2 price -- I'm sorry, what the log closing price is  
3 on the predicted price, or is that just the inner  
4 workings of the model?

5 A It's just the inner workings of the model.

6 Q And you're not familiar with how that  
7 thread traces through the application of the  
8 model --

9 A No.

10 Q -- to come out to the final number?

11 A Not specifically.

12 Q Okay. Are you generally aware?

13 A I mean, generally, it's just a  
14 calculation. So you basically sum up all these  
15 components to get to your coefficient, which turns  
16 into a price. It's a whole calculation. It's  
17 rather complicated.

18 Q So the calculation isn't reflected here?

19 These are just the inputs. Right?

20 Like, if I totaled up this column, I  
21 wouldn't come out with anything reflective of the  
22 conclusions. Right?

23 You're just listing --

24 A Actually, if you total up the log column  
25 and the coefficient column, you should come up

1 with 1.4289.

2 Q Okay. Well, "Sumproduct of Coefficients  
3 and Inputs." Okay. That makes sense.

4 Log -- the next line is Log -- well,  
5 actually, under Log Closing Price there is a  
6 second line of 12.

7 A That's actually part of Quarters to Sell,  
8 so you can look at it as 12 quarters, 50 quarters,  
9 or 100 quarters.

10 Q Oh, I see. So that doesn't -- that's  
11 encompassed in Log Quarters to Sell Under the  
12 1 Percent Limit Rule?

13 A Yes.

14 Q Even though it's a line above that?

15 A Yes.

16 Q Okay. So what does that speak to? What  
17 is that all about?

18 A So that's the model. The model can  
19 determine the discount based on the quarters to  
20 sell.

21 So in this particular case, we use  
22 50 quarters because, up at the top of page 10, we  
23 came up with 53 quarters to sell.

24 Q Right.

25 A So we used -- in this model, we used -- we

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1 rounded to 50 quarters.

2 Q Okay.

3 A And that goes into the calculation.

4 Q Okay. But this says, "Log Quarters to  
5 Sell Under the 1 Percent Limit Rule."

6 What's the "1 percent limit rule"?

7 A That is part of Rule 144. So in the  
8 model -- if you look at the model, there's -- it  
9 calculates it based on what the impact on the  
10 restricted stock studies during the model would  
11 be.

12 Q And what is the 1 percent restriction  
13 under Rule 144?

14 A There's a limit to 1 percent of the  
15 trading volume over a period of time.

16 Q But what's the limit? What does it limit?

17 A It limits the amount of shares you can  
18 sell.

19 Q Who can sell?

20 A That any holder can sell.

21 Q Well, any holder can only sell 1 percent?

22 A Under Rule 144. So if you're subject to  
23 144, you're subject to --

24 Q What do you mean by "subject to Rule 144"?

25 A Again, under Rule 144, there are certain

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1 limitations on selling shares.

2 Q Okay. But what limitations lead to a  
3 1 percent limit rule?

4 A There's volume limitations you can sell  
5 under 144.

6 Q But volume limitations on who?

7 A Anyone who is subject to Rule 144.

8 Q Well, I understand. But would Dr. Golberg  
9 be subject to 144 such that he could only sell  
10 1 percent of his stock?

11 A I have no opinion on whether he was  
12 subject to 144 or not.

13 Q So if you have no opinion on whether he  
14 was subject to it, why would you use the 1 percent  
15 limit rule in the model?

16 A That's the way our model calculates it.

17 Q And up top, you assume that he could sell  
18 15 percent of the daily trading volume. Right?

19 A Yes.

20 Q The 1 percent rule, is that 1 percent per  
21 day?

22 A No.

23 Q What is it? 1 percent per what? What  
24 does it mean? What is it 1 percent of?

25 A There's a formula. I can't recall the

1 exact calculation. I'm not an expert on 144, but  
2 there is a limitation. I don't recall what it  
3 was.

4 Q Okay. Did you consult with an expert on  
5 144 in this engagement?

6 A No.

7 Q Okay. So you don't know what the  
8 1 percent limit rule is?

9 A I don't know exactly what it is.

10 Q Okay. But you used a methodology that  
11 applies a 1 percent limit rule. Right?

12 A Our model does that, yes.

13 Q Okay. But up above, you assume that  
14 15 percent of the daily trading volume could have  
15 been sold without affecting market price?

16 A Correct.

17 Q Do you know how the 15 percent assumption  
18 relates to the 1 percent limit rule?

19 A No.

20 Q Okay. So you don't know if the model  
21 assumes you could only sell 1 percent per day of  
22 the trading volume?

23 A It's not per day. I don't know it is.

24 Q Is it per 15 days?

25 A Again, I don't recall the exact trading

1 formula.

2 Q So you really have no idea how the  
3 1 percent rule relates to the 15 percent  
4 assumption that you used as an input into this?

5 A No.

6 Q Okay. "Registration Status. Use the Time  
7 Period I Dummy variable to reflect the longer  
8 holding period due to size of block."

9 So what does that mean?

10 A Where are you?

11 Q Well, maybe they are two different things.

12 So Registration Status -- I'm sorry.

13 So the next thing under Log Quarters to  
14 Sell Under the 1 Percent Limit Rule, there's a  
15 line there for Registration Status.

16 A Oh, okay. We use 1 because it was  
17 unregistered shares.

18 Q What other options are there?

19 A There's either registered shares or  
20 unregistered shares.

21 Q What would the input be if there were  
22 unregistered shares?

23 A If they're unregistered, it's a 1.

24 Q What about if they're registered?

25 A I would be a 0.

1 Q And do you know why that is?

2 A Why do we have a 0 or 1?

3 Q Why would you use a 0 for registered and a  
4 1 for unregistered? Do you know why?

5 A Well, most of the shares we deal with are  
6 unregistered. I understand these shares are  
7 unregistered.

8 Q But do you know why you would use a 1 for  
9 unregistered, other than that's what it says on  
10 the, you know --

11 A Well, in our model, there's -- when you  
12 have restricted shares, they can be either  
13 registered or unregistered.

14 Q Right.

15 A So we are looking at shares that are  
16 unregistered.

17 Q I understand that. But what is the  
18 significance of the value 1?

19 A Because we are valuing unregistered  
20 shares.

21 Q And if they were registered, you would use  
22 a 0?

23 A Correct.

24 Q I mean, I'm not a math major or an  
25 accountant, but I know there's a big difference



1     when you multiply something by 1 or 0, and those  
2     are actually answers I could give because 1 stays  
3     the same and 0 is 0.

4           A     Sure.

5           Q     So how does the variable 1 trace through  
6     the calculations done by the model?

7           A     What do you mean? So if it's a 1, it  
8     adds -- it adds that -- whatever those two  
9     variables are to the price.

10          Q     Which two variables?

11          A     So registration, if it's 1, it calculates  
12     a field in coefficient, and it's 0, it does not.

13          Q     Okay.

14          A     So, basically, if you had registered  
15     shares, it would give you a lower discount.

16          Q     So you think that this is a constant?  
17     This variable is a constant? Registration status  
18     is a constant in your model?

19          A     Well, in the model, you can have  
20     registered shares or unregistered shares.

21          Q     For unregistered shares, it stays the  
22     same?

23          A     Yes.

24          Q     Do you know what that contributes to the  
25     calculation?

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1           A       You'd have to add it up. I don't know.

2           Q       No, no. I mean, do you know what the  
3       reason is for using this data set as part of the  
4       overall calculation?

5           A       You mean in the model?

6           Q       Yeah.

7           A       Yes, because there's differences between  
8       registered and unregistered shares --

9           Q       Right.

10          A       -- in the discounts.

11          Q       And, again, so unregistered shares,  
12       regardless of any of the individual  
13       characteristics of the underlying company, the  
14       same 1 would be used?

15          A       Yes.

16          Q       And the 1 increases the discount, the  
17       reduction, versus market value that you're opining  
18       on. Correct?

19          A       Correct.

20          Q       So you give the same reduction based on  
21       this input to every single unregistered share,  
22       regardless of who holds it or what company it  
23       relates to, what sector the company's in, the  
24       company's financial condition, the company's  
25       trading history, et cetera?

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1           A       Yes.

2           Q       Okay. So then Time Period I Dummy, in the  
3       Comments, it says, "Use the Time Period I dummy  
4       variable to reflect the longer holding period due  
5       to size of block."

6                   What does that refer to?

7           A       That ties to -- because we used Time  
8       Period I above, we used the Time Period I Dummy  
9       below.

10          Q       Okay. But this says due to "size of  
11       block." What does that mean, "size of block"?

12          A       That refers back to the top of page 10  
13       where we calculate the big block and how long it  
14       would take to . . .

15          Q       So "size of block" relates to the absolute  
16       number of shares, or the number of shares relevant  
17       to the daily trading volume?

18          A       The number of both. Actually, the number  
19       of shares -- it's the size of the block and how  
20       long it would take to get -- basically, Time  
21       Period I Dummy here equates to -- if we look at  
22       Log Market Cap Time Period I, it's the same thing.

23                   So if you use Time Period I at the top of  
24       this -- if you look at this table, if you use Time  
25       Period I at the top, you have to use Time Period I

1 down in the dummy section.

2 Q Got it. And then Intercept, that's the  
3 last input, it says, "Assumed to be 1. (We have  
4 not forced the regression through the origin, but  
5 rather used the intercept as a given)."

6 What does that mean?

7 A That's just where -- if you're doing a  
8 regression, you look at where it intersects the  
9 axis, and that's just basically what this is.

10 So it's about --

11 Q But it says, "Assumed to be 1."

12 A Yes.

13 Q Why do you -- isn't that usually  
14 observational in nature, where the intersect is?

15 A In our model, we assume it's 1.

16 Q You don't actually observe where the  
17 intersect actually is?

18 A No, we don't.

19 Q Why not?

20 A It's the way we run our model. So we just  
21 assume.

22 Q But do you know why it's done that way?

23 A No. I don't know.

24 Q Did you ask anyone?

25 A No.

1           Q     Is it fair to say that, for all of these  
2     inputs, you didn't make any inquiry before you  
3     used it in this engagement, you know, Why do we do  
4     it this way? Why do we do it that way? Why do we  
5     do it this way?

6                     This is the model, and you just simply  
7     applied the model?

8           A     I mean, I know why we do most of it. I  
9     know why we picked volatility. I know why we  
10    picked time frame. Those are the two biggest  
11    drivers.

12          Q     And the time frame is driven by the  
13    15 percent assumption?

14          A     Correct.

15          Q     It's driven solely by that. Right?

16                     You simply apply that to the daily trading  
17    volume. Right?

18          A     Correct.

19          Q     Okay. Have you ever asked anyone inside  
20    the firm why none of these things are  
21    individualized to specific public stocks when you  
22    have the actual numbers?

23                     MR. KAZAN: Object to the form.

24                     THE WITNESS: No.

25

1 BY MR. ZIMMER:

2 Q Have you ever asked them why they stick  
3 with the 3 percent treasury yield?

4 A Because that represents a long-term rate  
5 and we normalize it.

6 Q Okay. Just so I'm clear -- I think I  
7 probably asked this.

8 The S&P 500 12-month change that was for  
9 Navidea -- that was Navidea specific. That was an  
10 actual observation on the trading history of  
11 Navidea, or not?

12 A No. That's the actual S&P 500.

13 Q Oh, I apologize. That's the index?

14 A Yes.

15 Q Okay. Sorry about that.

16 Okay. And I just want to summarize a few  
17 things.

18 So you're not aware of what types of  
19 companies are in the sample size for the MPI  
20 study?

21 A I'm not.

22 Q Okay. Are you aware of -- generally, of  
23 what the trading volume was of the companies  
24 incorporated into the MPI study?

25 A No.

1 Q And, again, I think I asked this.

2 Are you aware of what specific  
3 restrictions existed in the private placements  
4 that are the subject of the MPI study?

5 A For stocks individually?

6 Q Yes.

7 A They were subject to whatever the 144 rule  
8 was at the time.

9 Q Do you know if there were any other  
10 restrictions on the stock?

11 A Not that I'm aware of.

12 Q Do you know whether there were?

13 MR. KAZAN: Object to the form.

14 THE WITNESS: I think -- I don't  
15 believe there were, actually.

16 BY MR. ZIMMER:

17 Q You don't believe there were?

18 A No.

19 Q What's that based on?

20 A Because when they do the stocks, they  
21 pretty much vet them. They're looking for stuff  
22 that's strictly 144 so that you can put it into  
23 the proper buckets.

24 Q Okay. So private placements, they're  
25 private transactions outside the public market.

1 Right?

2 A Correct.

3 Q Are they typically -- well, do you know  
4 whether the private placements in your -- strike  
5 that.

6 Do you know whether the private placements  
7 that were the subject of the MPI study were all  
8 arm's length transactions?

9 A Yes.

10 Q How do you know that?

11 A Because we vet the transactions to make  
12 sure they are arm's length transactions.

13 Q Okay. And those are individual  
14 purchasers and individual sellers negotiating the  
15 price.

16 Correct?

17 A Correct.

18 Q Did you do anything to determine whether  
19 the companies involved had issues that might  
20 affect the price the company was able to negotiate  
21 for the shares?

22 A I don't know the answer to that.

23 Q Okay. Well, you don't know whether it was  
24 done, or you don't know whether they existed  
25 because it wasn't done?



1                   Sorry. I believe my question was -- and  
2 I'll say it again, just in case I didn't say what  
3 I meant to say.

4                   Do you know whether the specific  
5 circumstances of the companies that were the  
6 subject of the private placement in the MPI study  
7 were considered to determine whether those  
8 company-specific issues could have affected the  
9 price of the private placement sale?

10           A       I don't know the answer to that.

11           Q       Okay. You don't know whether that was  
12 done or not at the time the study was done?

13           A       I don't know the answer. No.

14           Q       And have you read the literature around --  
15 or whatever there is to describe the creation of  
16 the MPI study --

17           A       Yes.

18           Q       -- by your firm?

19           A       Yes.

20           Q       Would that be something that would be  
21 mentioned in there?

22           A       Yes, it is.

23           Q       And so it wasn't done, or you don't  
24 remember whether it was?

25           A       I don't recall. I read it a long time

1 ago. I don't recall.

2 Q Okay. You didn't brush up on it for this  
3 engagement?

4 A No.

5 Q Okay. Let's see. Do you know whether the  
6 sellers and purchasers were interviewed to  
7 determine whether deal-specific issues impacted  
8 the price of the private placements that are part  
9 of the MPI study?

10 A I don't believe they were.

11 Q Okay. So it's possible that something  
12 like the seller needing cash right away, or things  
13 like that, could have affected the transaction  
14 price. Correct?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: Possibly. I can't  
17 speculate.

18 BY MR. ZIMMER:

19 Q And if those same conditions didn't occur,  
20 would it be an appropriate comparison?

21 A Again, I can't speculate on that.

22 Q Okay. You can't speculate whether  
23 specific factors in a transaction that drove the  
24 price down would be appropriate to apply to a  
25 transaction where that wasn't present?

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1           A       Again, I can't -- I don't know the answer  
2       to that.

3           Q       Okay. Do you know how many private  
4       placements were in the sample size for the MPI  
5       study?

6                       MR. KAZAN: Object to the form.

7                       Asked and answered.

8                       THE WITNESS: You asked me that  
9       earlier. I said I didn't know the  
10      answer.

11      BY MR. ZIMMER:

12          Q       Any order of magnitude?

13          A       There was a couple thousand, but I don't  
14      remember the exact number.

15          Q       Okay. Why wouldn't you compare the  
16      trading histories of, you know, like low volume,  
17      closely held, publicly traded shares rather than  
18      private placements since that's what you seem to  
19      want to do, is try to determine the public  
20      value -- you know, trading value of a stock?

21                       Why would you apply this model versus one  
22      that's geared more toward the circumstances you're  
23      presented with?

24          A       We've always used this model as our gauge  
25      for market data, so I'm not sure if there's other

1 models out there.

2 Q You don't know if there's other models out  
3 there?

4 A No.

5 Q Did you do any research to see if there  
6 were any models that worked up actual thinly  
7 traded public shares?

8 A I know there's models out there that are  
9 proprietary. I know there's another person who  
10 does that sort of thing.

11 Q Okay. Did your firm consider developing a  
12 model for this engagement that would be based on  
13 thinly traded public shares versus private  
14 placements?

15 A No.

16 Q Why not?

17 A Because we used this model. This model  
18 tends to work fairly well for us.

19 Q Well, when you say it "works fairly  
20 well" --

21 A We've used it for --

22 Q -- what does that mean?

23 Like, you've been able to charge money for  
24 it for ten years?

25 MR. KAZAN: Object to the form.

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1 MR. ZIMMER: Let the record reflect  
2 that that was said in jest.

3 MR. KAZAN: Understood, Mr. Zimmer,  
4 but can you just repeat the question that  
5 you want answered at this point?

6 MR. ZIMMER: Can read that back for  
7 me?

8 THE COURT REPORTER: Sure.

9 (The last question was read  
10 back by the court reporter.)

11 BY MR. ZIMMER:

12 Q Okay. So define "works fairly well."

13 A So I guess I misspoke. I shouldn't say it  
14 "works fairly well." We've used it a long time.  
15 It's a good representation of market data based on  
16 lack of liquidity or time to liquidate shares.  
17 That's why we use it.

18 Q But it's not based on public markets?

19 A It is based on public -- it's based on  
20 publicly traded stocks.

21 Q But it's not based on public trades of  
22 stock. It's based on private placements of  
23 publicly traded stock. Right?

24 A Correct. Yes.

25 Q Okay. And it's not necessarily based on

1     thinly traded companies. Right?

2           A     There are some that are thinly traded and  
3     some that aren't.

4           Q     Okay. So do you think that the thinly  
5     traded nature of a stock would be relevant?

6           A     It could be.

7           Q     You don't know?

8           A     I don't know.

9           Q     Okay. So you don't know whether including  
10    other types in there would skew or somehow render  
11    it less representative?

12          A     I don't know the answer to that.

13          Q     Okay. I may have asked this, and I  
14    apologize.

15                Do you know whether the companies in the  
16    MPI study were thinly traded -- you said there  
17    were some that were thinly traded and some that  
18    weren't?

19          A     Yes.

20          Q     Did you even consider using any  
21    methodology, other than this one, to address the  
22    question of whether the market price should be  
23    discounted in an analysis of the value of the  
24    shares at issue here?

25          A     The other analysis we looked at was we

1 looked at private placements of large blocks of  
2 stock.

3 Q How does that vary from what's in the MPI  
4 study?

5 A The MPI study is looking at private  
6 placement of restricted stock, whereas I can look  
7 at stocks that were traded not through the market  
8 but through private networks.

9 So there's basically two trading  
10 platforms: You've got the public market, the  
11 New York Stock Exchange, and there's also a  
12 network of trades through institutional trades.

13 Q Right.

14 A So if you look at institutional trades,  
15 that's usually where your big blocks trade.

16 Q Right.

17 A And you can see, from that data, what  
18 discounts were for large blocks of stock.

19 Q Did you apply that model here?

20 A No.

21 Q Okay. So those are two existing models.

22 Did you consider that the existing models  
23 might not be appropriate to use here?

24 A No.

25 Q You never considered the possibility?

1 A No.

2 Q Okay.

3 MR. ZIMMER: Why don't we take five  
4 minutes. Let me organize. I went a  
5 little bit out of order, got ahead of  
6 myself a little bit.

7 MR. KAZAN: Sure.

8 (A recess was held off the record.)

9 MR. ZIMMER: Back on the record.

10 BY MR. ZIMMER:

11 Q In arriving at an output from your -- from  
12 the MPI study methodology, is there one variable  
13 that has the largest impact on the outcome?

14 A There's two variables that have the  
15 largest impact: one is volatility, and one is  
16 time -- time period.

17 Q But the time period is based on the  
18 15 percent assumption. Correct?

19 A Correct.

20 Q And the volatility is based on the  
21 actual -- in this case, the actual volatility of  
22 Navidea shares?

23 A Correct.

24 Q Okay. But do you know which of those two  
25 has the greatest impact?



1 A No.

2 Q Why not?

3 A We could calculate it and see. I don't  
4 recall, off the top of my head. You'd have to do  
5 the calculation and see which one gives you the  
6 biggest, but . . .

7 Q Okay. But one of the two most important  
8 factors is this longstanding 15 percent  
9 assumption?

10 A The time frame, yes.

11 Q To be clear, on page -- you know, the  
12 assumption on page -- I believe it was 10 --  
13 right? -- of 15 percent of the daily trading  
14 volume could be added. Correct?

15 A Correct. Yes.

16 Q Okay. It seems like a pretty detailed  
17 methodology.

18 Do you know who actually developed it?

19 A It was developed with a number of the  
20 people in our firm.

21 Q Were you at the firm at the time?

22 A No.

23 Q Okay. Do you know if the people are still  
24 at the firm that did it?

25 A I think most of them are.

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1           Q       Okay. And you said, to the best of your  
2       knowledge, it hasn't been updated in some time.

3                   Has it ever been updated?

4                   MR. KAZAN: Object to the form.

5                   THE WITNESS: The data is updated  
6       from time to time. The methodology stays  
7       pretty much the same.

8       BY MR. ZIMMER:

9           Q       The methodology is the same; the inputs  
10      are updated. But, for example, the treasury --  
11      some of them -- when you say "updated," you know,  
12      they reflect reality. Right?

13                  So, like, the S&P 12-month change, is it  
14      always 12 months? You always use 12 months, you  
15      said?

16           A       We've always used 12 months.

17           Q       Even when you're looking at a 53-month  
18      period of -- 53-quarter period of selling, you're  
19      still going to look at a 12-month period?

20           A       Correct.

21           Q       And although it's probably technically a  
22      variable, the risk-free rate has remained the same  
23      throughout. Correct?

24           A       Yes. Well, since the rates fell to  
25      unusually low rates, we've normalized it to

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1     3 percent.

2           Q     Do you know what you did before that?

3           A     We used the actual.

4           Q     You used the actual until the rate went  
5     down?

6           A     Correct.

7           Q     Okay. Do you consider the MPI model to be  
8     generally accepted?

9           A     Yes.

10          Q     How do you define that?

11          A     We use this in hundreds of valuations each  
12     year that go to the IRS, and they've been through  
13     it before.

14          Q     Okay. Has it been used in court before?

15          A     Yes.

16          Q     How many times?

17          A     I don't know.

18          Q     Have you used it in court before?

19          A     Yes.

20          Q     How many times?

21          A     Probably three or four.

22          Q     Okay. What were the circumstances in  
23     those cases?

24          A     One was a -- actually, we can look at my  
25     history, and I'll tell you exactly what it was.

1           Q       Yes. As I said, just to be clear, the  
2       last two pages of the addenda are not contained in  
3       this exhibit, but your testimony is complete in  
4       here. So we can refer to that, if you want.

5           A       So that was used in Lobsenz versus  
6       Lobsenz, which is at the bottom of my trial  
7       history.

8           Q       Okay. And what were the circumstances  
9       there?

10          A       That was a family dissolution matter, and  
11       the issue was a -- there was an asset we were  
12       valuing, and we were determining lack of  
13       marketability for that asset.

14          Q       What was the asset?

15          A       It was an interest in a family limited  
16       partnership.

17          Q       Publicly traded?

18          A       No.

19          Q       Okay. What else?

20          A       That's the only one I've used in court.

21          Q       Okay. Again, that didn't involve publicly  
22       traded securities?

23          A       Correct. I've used it in cases that have  
24       settled, but the ones that have gone to trial --

25          Q       Right. Understood.

1                   Okay. Did you say earlier that it had  
2   been peer reviewed?

3           A       That's my understanding.

4           Q       Do you know how? when? where?

5           A       No, I do not.

6           Q       What's your understanding based on?

7           A       My understanding is it was published in an  
8   article, and I assumed it was peer reviewed.

9           Q       You assumed?

10          A       Yes, sir.

11          Q       Is "publication" equal to "peer review"?

12          A       No.

13          Q       Are you familiar with the publication?

14                   It's listed in here. It's Business  
15   Valuation --

16          A       Business Valuation Review: Spring of  
17   2011. It's on the bottom of page 8.

18          Q       Oh, page 8. I see the footnote. Sorry.

19          A       It wasn't my publication.

20          Q       When you say it wasn't your publication,  
21   do you mean you weren't involved in having it  
22   published, or you weren't the publisher of the  
23   periodical?

24          A       Neither.

25          Q       Okay.

1           A       I have published in Business Valuation  
2   Review, but I was not --

3           Q       **Is Business Valuation Review -- what type**  
4   **of a publication is that? Do you know who**  
5   **publishes it?**

6           A       Yeah. There's an industry group that  
7   publishes the Business Valuation Review. I don't  
8   remember the name of them, and they publish a lot  
9   of articles. They published one of my articles.

10          Q       **Was your article peer reviewed that was**  
11   **published?**

12          A       Yes.

13          Q       **What was that on?**

14          A       That was on using restricted stock studies  
15   to determine lack of marketability.

16          Q       **Of what?**

17          A       For privately held companies.

18          Q       **Okay. For privately held companies?**

19          A       Yes.

20          Q       **But you don't know whether this -- do you**  
21   **know whether Business Valuation Review conducts or**  
22   **requires a peer review prior to publication?**

23          A       My understanding is they do.

24          Q       **Okay. This says it was published in**  
25   **spring 2011.**

1                   Is that at or about the time it was  
2   developed, do you believe, or was it developed  
3   earlier than that?

4           A       My understanding is it was developed a lot  
5   earlier than that.

6           Q       Okay. Do you know whether this  
7   publication involved the use of this model to  
8   determine the impact of trading volume of publicly  
9   traded stocks on the public stock price?

10          A       I do not.

11          Q       Okay. Do you think it's likely that's  
12   what it was about?

13                   MR. KAZAN: Object to the form.

14                   THE WITNESS: What? The publication?

15                   MR. ZIMMER: Yeah.

16                   THE WITNESS: The publication was  
17                   about a restricted stock study and the  
18                   methodology they used to do it.

19   BY MR. ZIMMER:

20          Q       You believe -- finish. I'm sorry.

21          A       That's it.

22          Q       You believe it was about the methodology  
23   itself, not applications of the methodology, the  
24   different circumstances?

25          A       Not that I recall. I don't recall -- I

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1 read the article a long time ago. I don't  
2 remember.

3 Q Okay. Do you know if anyone else at your  
4 firm has used this in court to address the impact  
5 of trading volume on publicly traded share price?

6 A In court? No, I don't.

7 Q Do you know if it's been peer reviewed for  
8 that purpose?

9 A I don't know.

10 Q Do you know if it's ever been published  
11 for that purpose?

12 A Not that I'm aware of.

13 Q Okay. So even if you were to assume that  
14 the methodology had been peer reviewed, is it  
15 generally accepted practice to use a methodology  
16 designed for one purpose: to predict outcomes  
17 in different situations?

18 MR. KAZAN: Object to the form.

19 THE WITNESS: I don't think that's  
20 what we were doing here. We were looking  
21 at a discount that's created for a time  
22 period that it would take to liquidate a  
23 piece of stock. That's what this model  
24 does.

25



1 BY MR. ZIMMER:

2 Q But in your application of it to publicly  
3 traded stock, one of the two key inputs is the  
4 percentage of daily trading volume that could be  
5 sold without affecting share price.

6 Right?

7 A That's an input into the model, yes.

8 Q And it's one of two principal inputs that  
9 impact the outcome. Correct?

10 A That's correct.

11 Q And that is not part of the methodology.

12 Right?

13 A Well, the methodology just takes the -- a  
14 group of data over a thousand transactions and  
15 summarizes that data such that you can get a  
16 result based on your circumstances.

17 Q But what I'm saying is, this says you  
18 believe -- you say that you believe that studies  
19 published in Business Valuation Review are peer  
20 reviewed.

21 This says that, in 2011, "Regression  
22 Analysis and Discounts for Lack of Marketability"  
23 was published.

24 Is that the underlying private placement  
25 methodology that we've been looking at at the

1 bottom of page 10?

2 A Yes.

3 Q Does that incorporate the 15 percent  
4 assumption at the top of page 10, or is that  
5 what's applied to that assumption?

6 A We apply the 15 percent to create an input  
7 for the model.

8 Q Right. Do you believe that what was  
9 published in Business Valuation Review included  
10 the 15 percent assumption?

11 A No.

12 Q Okay. Is it generally accepted to use a  
13 predictive model if the outcome of application of  
14 the model incorrectly predicts true events?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: I'm not sure what you  
17 mean.

18 BY MR. ZIMMER:

19 Q If you had a model that was used to  
20 predict average temperature variant, let's say,  
21 per month -- okay? -- and somehow that model would  
22 predict that, in the state of Connecticut, it  
23 would be warmer in the month of January than in  
24 the month of August, would it be generally  
25 accepted to use that methodology?

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1 MR. KAZAN: Object to the form.

2 BY MR. ZIMMER:

3 Q If you knew that the outcome was wrong?

4 MR. KAZAN: Object to the form.

5 THE WITNESS: If you were using a  
6 predictive model as of a point in time, so  
7 it's known or knowable as of, in this  
8 case, February 14, 2019, so there's no way  
9 I would know, at February 14, 2019, what  
10 the actual numbers would be going forward.

11 BY MR. ZIMMER:

12 Q If you apply your model, is there ever a  
13 circumstance in which it would predict that sale  
14 of large volumes of shares would not cause the  
15 market price of the shares to go down?

16 A Again, that's not what our model does,  
17 so . . .

18 Q Well, you assume -- right? -- the  
19 15 percent will -- that more than 15 percent will  
20 drive the market price down if more than  
21 15 percent of the average daily trading volume is  
22 sold on a given day. Correct?

23 A That's correct. Yes.

24 Q If it turns out that the opposite is true,  
25 would that be a valid predictive model?

1           A       Again, the 15 percent is a rule of thumb  
2       that can be applied to a large population, so it  
3       could be possible that it's wrong. It could be  
4       possible that you could sell shares and there's no  
5       impact, or you could sell five shares and there is  
6       a big impact.

7           Q       If you knew that it was not effective in  
8       predicting outcomes, would it be appropriate to  
9       use it with respect to a specific stock?

10                   MR. KAZAN: Object to the form.

11                   THE WITNESS: Again, you're using a  
12       broad market assumption to determine  
13       future events. There's no way you'd know  
14       future events at that particular time.

15       BY MR. ZIMMER:

16           Q       Well, could one use this model -- well,  
17       could one -- strike that.

18                   Could one attempt to confirm the accuracy  
19       of this model with respect to a specific stock by  
20       applying it to a different date in time?

21                   You apply to it to two specific dates.

22                   Correct?

23           A       Correct. Yes.

24           Q       And theoretically -- not theoretically.  
25       If asked, you could apply it to any date

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1 in time. Correct?

2 A True.

3 Q You'd use the same 15 percent assumption:  
4 the assumption that the sale of more than  
5 15 percent of the total daily trading volume --  
6 the average daily trading volume would affect --  
7 cause a downward pressure on the price?

8 A That's correct. Yes.

9 Q So if you observed, say, a dozen instances  
10 where trading volume was somewhere in the order of  
11 10 to 80 times the average daily trading volume  
12 and on each one of those days, the price went up,  
13 would that indicate that perhaps your 15 percent  
14 assumption would not be appropriate to use on that  
15 given stock?

16 A Well, at a point in time you'd only have  
17 historical data first. So if I'm sitting here at  
18 February 14, 2019, I can only look back. I  
19 couldn't look forward.

20 Q Correct.

21 A Correct.

22 Q But you could do an analysis for a  
23 specific date earlier in time. Right?

24 A Correct.

25 Q So if you did that for a specific date and

1 it turned out that what was predicted was the  
2 opposite of what happened, would that call into  
3 question the applicability of this model going  
4 forward?

5 A You mean one instance or consistently over  
6 time?

7 Q Say it was consistent over time.

8 A Consistent over time, I might look at  
9 that, but if it was one instance, it can happen.

10 Q Okay. And you used this as a predictive  
11 model for dates. You said you can't look back.  
12 Right?

13 You're looking at August -- you're looking  
14 at February 14, 2019, and 2020?

15 A Yes.

16 Q Is that right?

17 A Those are my valuation dates, yes.

18 Q Okay. So what did you mean when you said,  
19 you know, you can't look back? What was your  
20 point there?

21 A That's not what I said. I said you can't  
22 look forward.

23 Q You can't look forward. Okay.

24 But since it's well after February 1 --  
25 excuse me, February 14 of 2020, right now, to look

1 at time periods subsequent to that, one would have  
2 to look back but not forward. Right?

3 A What do you mean? If we're doing it as of  
4 today? I'm not sure I understand.

5 Q Well, you used an as-of date. Right?

6 A Correct.

7 Q And I grant you that, if the as-of date  
8 were today, one could not look forward with any  
9 certainty, but you used an as-of date that was in  
10 the past. Right?

11 A Correct.

12 Q So to, quote/unquote, "look forward" from  
13 the date you used, one could still use historical  
14 data because there's all the time between  
15 February 14, 2020, and today that's actually  
16 elapsed. Right?

17 From your vantage point of February 14,  
18 2020, it's looking forward. But you're not trying  
19 to predict the future. You have actual data about  
20 subsequent events. Correct?

21 MR. KAZAN: Object to the form.

22 THE WITNESS: I have actual data of  
23 what actually happened; however, I'm  
24 looking at this at a point in time,  
25 February 14, 2019.

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1                   So the question is, What was known or  
2                   knowable at that date?

3                   So if they were going to do a  
4                   transaction on February 14, 2019, a  
5                   buyer -- whoever bought that stock could  
6                   only look back. He couldn't look forward.  
7                   They would not know what was going to  
8                   happen.

9       BY MR. ZIMMER:

10       Q       If your model were consistently wrong  
11       about the impact of high-volume trading on the  
12       price of Navidea shares, subsequent to  
13       February 14, 2020, would that call into question  
14       its applicability on that date?

15                   MR. KAZAN: Object to the form.

16                   THE WITNESS: No. It's only what's  
17                   known or knowable.

18                   So if I would have looked back and  
19                   saw that it was wrong, possibly, but  
20                   looking forward, there's no way to know  
21                   the future.

22                   As of February 14, 2019, there's no  
23                   way to know at that time what was going to  
24                   happen in the future.

25



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1 BY MR. ZIMMER:

2 Q Did you look at actual trading data for  
3 February 14, 2009?

4 A Yes.

5 MR. KAZAN: Just a minute. I think  
6 you got the date wrong.

7 MR. ZIMMER: I'm sorry.

8 BY MR. ZIMMER:

9 Q Did you look at actual trading data for  
10 February 14, 2019, and 2020?

11 A Yes.

12 Q Okay. Did you look to see if there were  
13 high-volume trading days bracketing that time  
14 period? Higher-volume trading than on that date?

15 A We look at -- we look -- we did a lookback  
16 from that looking back. I don't recall any  
17 higher-volume days.

18 Q Did you look for them?

19 A Yes.

20 Q Okay. You don't think there were --

21 A I don't recall them --

22 Q -- more than 15 percent?

23 A I don't recall any drastic movements in  
24 the trading volume.

25 Q But you're talking about 15 percent.

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1 Right?

2 A Yes.

3 Q Is the threshold. Right?

4 A That's what we're saying over an average  
5 of time. That's what you can . . .

6 Q Okay. Did you look back to see if there  
7 were, in fact, trading days where the volume  
8 exceeded 15 percent of the average daily trading  
9 volume?

10 A No. I don't recall doing that.

11 Q Okay. So you didn't bother to look at  
12 what the real-world impact of that might have  
13 been?

14 A Again, we didn't do that specific  
15 analysis.

16 Q Okay. And you didn't look at the known  
17 time period the entire time up until the time --  
18 the date you did your analysis either.

19 Is that correct?

20 A What do you mean? From 2019 back? Is  
21 that what you're asking?

22 Q Well, the approximate date that you  
23 submitted this report was -- what? -- I believe  
24 around November 15. Sometime in November of this  
25 year. Correct?

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1           A       Correct.

2           Q       Did you look at the time period prior to,  
3       you know, putting this in writing to see if the  
4       actual outcomes of high-trading volume days was  
5       consistent with what your model would predict?

6           A       Again, at the time we did this analysis,  
7       as of February 14, you'd only have historical.  
8       You wouldn't have future information.

9           Q       Understood. And you're assuming, then,  
10      that the person who would be willing to buy the  
11      shares would have access to it and would use your  
12      model to price the stock?

13          A       What I'm saying is, the person who's  
14      buying this information as of February 14, 2019,  
15      would only have historical data. He would not  
16      have future data.

17          Q       No. What I'm asking you is, Are you  
18      saying that a buyer would use your -- the MPI  
19      study to determine the price it was willing to  
20      pay?

21          A       Probably not, because it's a proprietary  
22      model.

23          Q       Okay. So would the stars just align and  
24      they would somehow automatically pay that same  
25      exact price? Is that how predictive your model

1 is?

2 A I don't know that it's that exact, but  
3 it's an assumption.

4 Q Okay. And if someone were to say, "Hey,"  
5 you know, "I commissioned MPI to do a study for  
6 me, and this is all it's worth," is the potential  
7 seller obligated to sell his shares on that date  
8 if he doesn't like the price that's offered?

9 A No. Not that I'm aware.

10 Q And if someone holds restricted shares in  
11 a publicly traded company and the price is not  
12 sufficient to motivate them to sell on any given  
13 day, and assuming they don't need the funds or  
14 have any other reason to disgorge the stock, is it  
15 fair to assume they would sell the stock on that  
16 date?

17 A Again, I can't speculate what an  
18 individual seller would do or individual buyers  
19 would do.

20 Q Okay. Fair enough. But that's what  
21 you're doing here. You're speculating that he  
22 would sell it on the first day. Correct?

23 MR. KAZAN: Object to the form.

24 THE WITNESS: Our assumption is that  
25 the sale would happen as soon as it's

1 available for sale.

2 BY MR. ZIMMER:

3 Q But an assumption is a speculation.

4 Right? It's a fancy-sounding one. It's

5 expensive. But an assumption is a speculation.

6 Correct?

7 MR. KAZAN: Object to the form.

8 THE WITNESS: It's an assumption. I

9 don't --

10 BY MR. ZIMMER:

11 Q How does an assumption differ from a

12 speculation?

13 A A speculation is saying he would have sold

14 it at a certain block of time when it's the

15 highest price. I'm saying he sold it on the first

16 available date. That's the assumption.

17 Q Do you know anything about Dr. Golberg's

18 financial condition?

19 A No.

20 Q Do you know anything about his holdings in

21 Navidea?

22 A No.

23 MR. KAZAN: Asked and answered.

24 BY MR. ZIMMER:

25 Q Do you know anything about the knowledge

1 and research and information he had about Navidea  
2 and its potential price changes over time?

3 A No.

4 Q Okay. But you assumed that he would sell  
5 it on that date. How is that more than  
6 speculation?

7 You don't even have inputs to speculate.  
8 You simply assigned that date. Correct?

9 A I assumed that date. Yes.

10 Q Okay. What were the factors that went  
11 into your assumption?

12 A That was the first available sale.

13 Q Did you take -- did you assume that he  
14 needed funds to fund his daily living?

15 A No.

16 Q Did you assume he had better, higher uses  
17 for the funds as of that specific date?

18 A No.

19 Q Did you assume that he was offered an  
20 attractive purchase price on that date?

21 A No.

22 Q Okay. You kind of assumed that the price  
23 would have been remarkably lower than the market  
24 price. Right?

25 MR. KAZAN: Object to the form.

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1 THE WITNESS: What do you mean?

2 BY MR. ZIMMER:

3 Q 50-plus percent lower than the market  
4 price, if he did a private placement on that day.  
5 Right?

6 A It wouldn't be 50. It was like  
7 40-something.

8 Q But you assumed that that would be the  
9 date he would pick to sell?

10 MR. KAZAN: Objection to form.

11 THE WITNESS: That was my assumption.

12 MR. ZIMMER: Okay.

13 BY MR. ZIMMER:

14 Q Did you come up with that assumption, or  
15 did someone ask you to assume that date?

16 A That was strictly math. I went to six  
17 months and 18 months after the date of the  
18 agreement.

19 Q Well, I understand. Was that -- was it  
20 your -- was it your choice to use that date as the  
21 assumed sale date -- or those two dates as the  
22 assumed sale date, or did someone instruct you  
23 that you should use those as the assumed sale  
24 date?

25 A I don't recall how that came about. I

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1     don't know. I don't remember.

2           Q     You don't? Did you discuss it internally  
3     at the firm?

4           A     No. I discussed it with counsel.

5           Q     Okay. And you don't recall how it came  
6     about?

7           A     I don't.

8           Q     Okay. Has Navidea stock been thinly  
9     traded throughout its history in your -- you know,  
10    your assessment of thinly traded?

11          A     No.

12          Q     When was it not thinly traded?

13          A     I don't recall the dates, but there was a  
14    point when it started trading more actively,  
15    subsequent to February 2020.

16          Q     So you looked at the subsequent history as  
17    well?

18          A     I did, yes.

19          Q     Okay. When you talk about timing the  
20    market, how is your assumption that these shares  
21    would be sold on the very first day they could be  
22    sold, regardless of financial condition, other  
23    opportunities, you know, available price, you  
24    know, the heavy discount -- how is that any  
25    different than timing the market that's just



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1     **negative for Dr. Golberg?**

2                   MR. KAZAN:   Object to the form.

3                   THE WITNESS:   What do you mean?

4     BY MR. ZIMMER:

5         Q     Well, aren't you, in essence, assuming --  
6     you're assuming that he would sell it on an actual  
7     date certain.   Right?

8                   Not even a range of dates.   Right?

9         A     Correct.   Yes.

10        Q     How so was that a more valid assumption  
11    than any other date that one might assume he would  
12    sell the shares?

13        A     Again, I can't speculate when he would  
14    sell the shares or not sell the shares.   My  
15    assumption was he sold it when it could be sold.

16        Q     But you say you can't speculate on when he  
17    would.

18        A     Correct.

19        Q     But you assigned a specific date and went  
20    through an entire 12-page -- is it a 12-page  
21    report?   I believe it's 12.   I want to give you  
22    full credit here.

23        A     Fifteen pages.

24        Q     Oh, 15.

25        A     It doesn't include the exhibits at the

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1 end, of course.

2 Q I'll give you extra credit for that.

3 A Okay.

4 Q And it also does include some stuff about  
5 Macrophage that we'll get to later.

6 But you produced this whole entire report  
7 based on the assumption that he would sell two  
8 specific blocks of shares on two specific dates.

9 Right?

10 A That's correct.

11 MR. KAZAN: Object to the form.

12 THE WITNESS: Sorry.

13 BY MR. ZIMMER:

14 Q And you don't consider that speculating on  
15 how he would time the market?

16 A I think that has nothing to do with timing  
17 the market. It's just a specific date when it  
18 could be sold.

19 Q Well, so is, like, May 10, 2020, or  
20 whatever. And I'm -- just to be fair, I'm not  
21 picking -- even if it's coincidental, I'm not  
22 suggesting a date that was picked by Mr. Orr or  
23 referenced anywhere in this case.

24 Like, how is that any different from any  
25 other date in time as far as likelihood that he

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1     **would sell the shares on that date?**

2           A     Again, I can't speculate when he would  
3     sell the shares. I just chose the date when the  
4     restriction period was up.

5           Q     Okay. If someone did some research into  
6     Dr. Goldberg's financial condition and, you know,  
7     market conditions and known information about  
8     Navidea and trading history and financial  
9     wherewithal and, you know, available price on  
10    specific dates and picked a different date, would  
11    that be any more speculative than your assumption  
12    that he would sell them on that particular date?

13               Or less, if they had actual real-world  
14    inputs to drive their assumption?

15                       MR. KAZAN: Object to the form.

16                       THE WITNESS: Again, I think any time  
17    you look at a specific market timing, that  
18    could be speculative. You don't know --  
19    sitting here today, you don't know when he  
20    would have sold or not sold.

21    BY MR. ZIMMER:

22           Q     Would information based on actual known  
23    facts be more speculative an assumption than your  
24    assumption, which is based on none of that?

25                       MR. KAZAN: Object to the form.

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1                   THE WITNESS: Again, there's no way  
2                   to speculate when he would or would not  
3                   have sold.

4       BY MR. ZIMMER:

5           Q       But you did?

6           A       I assumed, when the restriction was up, he  
7                   would sell. That was my assumption.

8           Q       How is that not speculating on when he  
9                   would sell?

10                   You picked a date in time to value his  
11                   shares based on an assumption he would sell them  
12                   on that date. Right?

13                   MR. KAZAN: Object. Asked and  
14                   answered, and you're bordering on  
15                   argumentative at this point.

16                   MR. ZIMMER: I disagree with the  
17                   argumentative point, and the asked and  
18                   answered -- this is in the context of an  
19                   inquiry here, so . . .

20       BY MR. ZIMMER:

21           Q       Is it correct?

22           A       I picked a date that was my assumption.

23           Q       And you don't -- you can differentiate  
24                   that, in terms of market timing, from anyone else  
25                   picking any other date? How?

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1           A       I can't. You can pick any date. You just  
2   don't -- no one knows what date.

3           Q       And you did. Right?

4           A       I picked a date when the restrictions  
5   lapsed.

6           Q       What makes your date the right date?

7           A       I don't know my date's the right date.  
8   That's the assumption I made.

9           Q       Okay. And how would you know if anyone  
10   else's date was the right date?

11          A       You wouldn't.

12          Q       Okay. So now if the Navidea shares --  
13   you have two dates. Right?

14                   You have February 2019 -- February 14,  
15   2019, and February 14, 2020.

16                   Right?

17          A       Correct.

18          Q       Even assuming you couldn't look at time  
19   frames outside of that -- and I take issue  
20   with -- as a --

21                   MR. KAZAN: Greg, I'm just going to  
22                   stop you. Ask the question. You're  
23                   starting to inject your personal  
24                   statements, and I'm going to object.

25                   At a certain point, I'm going to

1           instruct him not to answer simply because  
2           your question is not going to be clear.

3           MR. ZIMMER: Well, if you think my  
4           question isn't clear, let me know, because  
5           I want to make it clear.

6           And I grant you that this is a  
7           complicated area, and I'm trying to  
8           develop clear and meaningful questions for  
9           him and get good information.

10           I'm not trying to trick you. As I  
11           said, the record will reflect what you  
12           said. Nothing I say you said is going to  
13           change what you said. I'm not that kind  
14           of a lawyer.

15 BY MR. ZIMMER:

16       Q     So is it your position that you cannot --  
17     that if you want to apply your model and you want  
18     to determine its predictive value, that you  
19     cannot look at a date after February 14, 2020,  
20     apply your model, and see whether it was correct  
21     or not?

22           MR. KAZAN: Object to the form.

23 BY MR. ZIMMER:

24       Q     As one way of determining the predictive  
25     value of your model?

1           A       What I'm saying is, as of either of these  
2       dates, the February 14, '19, or February 14, '20,  
3       you would not have future information. You would  
4       only have historical information.

5           Q       If you are using your 15 percent in your  
6       model -- I think maybe refer to it that way.

7                   Right?

8                   You're using two separate inputs. You've  
9       got all the things listed in the chart on the  
10      bottom of page 10.

11                  And let me just ask you -- sorry.

12                  If we went through the chart on page 11,  
13      which is for the later time period, would there  
14      be material differences in your answers to those  
15      questions about all of those variables?

16                  I think there was one with respect to the  
17      holding period.

18           A       The only difference is -- well, obviously  
19      the volatility changed, but the only difference is  
20      the holding period was this model's -- the page  
21      on -- page 11 is using the six-month holding  
22      period.

23           Q       And why does that one use the six-month  
24      holding period?

25           A       Because when we calculated, at the top of

1 page 10, for that second period, we said it would  
2 take five quarters to sell.

3 Q It was a shorter predicted --

4 A It was shorter.

5 Q -- time period needed to dribble the  
6 shares out to the market, in your view, using the  
7 same 15 percent. Right?

8 A That's correct.

9 Q So there were two components to your  
10 analysis, basically, and one is the application of  
11 the methodology of the MPI study. Right?

12 A Yes.

13 Q And the other one is the 15 percent input.  
14 Right?

15 A Correct.

16 Q The others are kind of objective things.  
17 Right?

18 A Correct.

19 Q The only variable that is not,  
20 quote/unquote, "objective" is the holding period,  
21 and that's based on the 15 percent. Correct?

22 A Correct.

23 Q Okay. So if one wanted to analyze the  
24 predictive value of the combination of the  
25 15 percent and the MPI study, couldn't one look at



1 anecdotal dates in various public shares and look  
2 at high-trading volume days, applying the model as  
3 of that date, and then look at the actual impact  
4 on price to determine the predictive value of your  
5 model? Wouldn't that be fair?

6 MR. KAZAN: Object to the form.

7 THE WITNESS: I'm not sure I  
8 understand that.

9 BY MR. ZIMMER:

10 Q So the purpose of, for example, page 10 --  
11 Right?

12 A Mm-hmm.

13 Q -- was to use your 15 percent of daily  
14 trading volume assumption. Right?

15 A Correct. Yes.

16 Q Input that and some Navidea-specific  
17 information into your model. Correct?

18 A Correct.

19 Q And come up with a predicted impact on  
20 stock price. Right?

21 A Yes.

22 Q Of a sale of a high volume of shares into  
23 the market. Correct?

24 A Correct.

25 Q Okay. If one wanted to double-check the

1 predictive value of the combination of the  
2 15 percent and the MPI study methodology, couldn't  
3 you go back over time, look at different  
4 companies, and go to specific dates where there  
5 were exceptionally high trading volumes, apply the  
6 15 percent assumption, apply the MPI study  
7 methodology, predict what the price impact would  
8 have been on that date, and then compare it to the  
9 actual?

10 Wouldn't that be one fair way to assess  
11 the predictive value of the model?

12 MR. KAZAN: Object to the form.

13 THE WITNESS: Potentially.

14 BY MR. ZIMMER:

15 Q Yes or no? Potentially? I don't  
16 understand what "potentially" means.

17 A I've never done that analysis, but you  
18 could do it, I guess.

19 Q No, no. It's not doing the analysis.

20 The question is, Would that be a  
21 reasonable way to double-check the predictive  
22 value of this model?

23 MR. KAZAN: Object to the form.

24 THE WITNESS: If you had a big enough  
25 population, you could. Yes.

**NAVIDEA BIOPHARMACEUTICALS, INC. vs MICHAEL M. GOLDBERG, M.D.**

**William F. Murray, CPA/ABV/CFF, ASA on 12/06/2021**

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1 BY MR. ZIMMER:

2 Q Okay. Because the point of this is to  
3 predict, on any given day, what the impact of a  
4 more than 15 percent increase in trading volume  
5 would have on the price of the stock on that date.

6 Right?

7 MR. KAZAN: Object to the form.

8 THE WITNESS: Again, there's two  
9 issues: the 15 percent and the model  
10 itself.

11 BY MR. ZIMMER:

12 Q Well, the purpose of the analysis that you  
13 did, by combining the 15 percent assumption with  
14 the MPI study methodology, was to predict, for a  
15 given day, what the impact of a certain volume of  
16 trading would be on the price of the shares on  
17 that day. Correct?

18 MR. KAZAN: Object to the form.

19 THE WITNESS: Correct. Yes.

20 BY MR. ZIMMER:

21 Q And would your model ever predict that the  
22 price of the stock would go up when large blocks  
23 of shares were traded?

24 A I don't know the answer to that.

25 Q Well, you must know the answer. Right?

1 I mean, you -- is it possible that, even  
2 with one quarter to sell -- you know, you know how  
3 this study -- I mean, there's only two  
4 possibilities: one, you don't know what you  
5 would get when you put into this model; or two,  
6 this is a discount model that necessarily yields a  
7 discount number.

8 I mean, it says here, "Predicted Private  
9 Placement Discount."

10 A Yeah. It generates a discount. It  
11 predicts a discount.

12 Q It would always predict a lower price.  
13 Right?

14 A That's correct. Yes.

15 Q Okay. So if there were times where the  
16 price is actually higher, that would be contrary  
17 to the predictions of your model every time.  
18 Right?

19 A That's correct. Yes.

20 Q Okay. Do you know if anyone has ever done  
21 any kind of a secondary or different type of  
22 analysis to try to double-check the accuracy of  
23 the predictions made by the combination of the  
24 15 percent of daily trading volume thresholds and  
25 the MPI study methodology?

**NAVIDEA BIOPHARMACEUTICALS, INC. vs MICHAEL M. GOLDBERG, M.D.**

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1           A       No.

2           Q       You don't know whether they have, or you  
3 know they haven't?

4           A       I don't know whether they have.

5           Q       Okay. Have you ever heard it discussed  
6 within the firm?

7           A       No.

8           Q       Okay. Have you ever considered, before  
9 applying it, whether you should do some kind of  
10 real-world reality check to see how predictive it  
11 actually is?

12          A       No.

13          Q       It's kind of just on the shelf, and when  
14 you need to predict a discount, you pull this off  
15 the shelf and you use your 15 percent and  
16 you -- and that is the way that your firm values  
17 the impact of high-volume trading on publicly  
18 traded shares. Right?

19          A       Yes.

20          Q       Okay. I mean, what's your understanding  
21 of how peer review works?

22          A       My understanding of peer review is someone  
23 else in the industry reads your analysis.

24          Q       Do they vet it? Do they try to  
25 double-check it? Do they try to confirm its

1      usefulness or no?

2            A      That, I don't know.

3            Q      You don't know. Okay.

4                    Have you ever, on your own initiative,  
5      outside an engagement, just applied the  
6      combination of the 15 percent of daily trading  
7      volume assumption and the methodology on any given  
8      day just to see whether it accurately predicted  
9      reality?

10          A      No.

11          Q      Do you know if anyone at the firm ever  
12      has?

13          A      Not that I'm aware of.

14          Q      Why wouldn't you try to do that before you  
15      used it in an opinion like this?

16          A      Because the 15 percent is a basic market  
17      guideline that we get from traders.

18          Q      No, no. We've crossed that bridge. Okay?

19          A      Yes.

20          Q      Right or wrong, you're using that same  
21      number throughout.

22                    But you have a combination approach here,  
23      which is to incorporate the 15 percent of daily  
24      trading volume threshold into the MPI study  
25      methodology. Right?

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1           A       Correct.

2           Q       When you want to value the impact of high  
3       trading volume on the price of a publicly traded  
4       stock.   Right?

5           A       Correct.

6           Q       Did it ever occur to you that that is  
7       something that could be done on any given date on  
8       any given stock, and you can actually get a  
9       reality check or double-check the predictive value  
10      if you did that on a day or two just to see what  
11      happened anecdotally?

12          A       You'd have to do it over a long period of  
13      time.   And, again, you don't know -- if it happens  
14      on one day, you don't know that it's going to  
15      happen on the next day.

16          Q       But if it -- if you don't know if it's  
17      wrong, it's wrong.   Right?

18          A       True.

19          Q       So if you were going to predict something  
20      and reality says it's more likely wrong than not  
21      in this particular instance, then what's the value  
22      of it?

23                   MR. KAZAN:   Object to the form.

24      BY MR. ZIMMER:

25          Q       Just to stand on theory?

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1 MR. KAZAN: Object to the form.

2 THE WITNESS: Again, you'd have to  
3 look at a number of stocks over a period  
4 of time to see what the market does.

5 BY MR. ZIMMER:

6 Q Okay. But if you used this on a specific  
7 date on a specific stock and it was completely  
8 wrong, that wouldn't impact your willingness to  
9 use it repeatedly?

10 MR. KAZAN: Object to the form.

11 THE WITNESS: Again, you'd have to  
12 look at it over time.

13 BY MR. ZIMMER:

14 Q No, no. What I'm saying is if you did  
15 apply it on a single day and the results were  
16 off-the-chart opposite of what this would predict,  
17 would that raise any question in your mind as to  
18 whether you should use it going forward?

19 A Again, one instance, you don't know  
20 the -- you don't know if it's going to happen  
21 every time or not. So, again, it could be off one  
22 day. That's possible.

23 Q Okay. And it could easily be off on  
24 January -- on February 14, 2019, or February 14,  
25 2020?



1           A       It's possible.

2           Q       But you think it would be more accurate  
3       than real-world evidence of what the impact of  
4       high-volume trading days was upon share price?

5                   MR. KAZAN: Object to the form.

6                   THE WITNESS: Again, it's a  
7       predictive model, so you don't know unless  
8       you -- you'd have to look historically at  
9       the numbers.

10       BY MR. ZIMMER:

11          Q       But could you use it to -- when you say  
12       "predictive," you are linking predictive to  
13       forward-looking. But you --

14          A       Correct.

15          Q       -- never used it forward-looking. You  
16       always used it on dates in the past.

17                   When you did your report, February 14,  
18       2019, was long in the past. Correct?

19          A       That's correct.

20          Q       And when you did your report, February 14,  
21       2020, was long in the past. Right?

22          A       That's correct.

23          Q       So you could have just as easily looked at  
24       the Navidea trading information and applied it to  
25       other dates too -- right? -- and seen if this was

1 actually predictive of what happened on any number  
2 of those dates -- right? -- to determine whether  
3 it was appropriate to use it to predict the impact  
4 of high-volume trading on Navidea's share price,  
5 couldn't you?

6 MR. KAZAN: Object to the form.

7 THE WITNESS: The issue is that, as  
8 of February 14, a buyer would not have the  
9 that information, so he wouldn't be able  
10 to do that.

11 BY MR. ZIMMER:

12 Q But if you looked back -- even if you say  
13 you want to look back from that date -- if you  
14 look back from February 14, 2020, and looked at  
15 high volume -- wouldn't it make sense to  
16 double-check to say, Okay. There have been  
17 however many high-volume trading -- in your mind,  
18 high-volume trading, more than 15 percent --  
19 right? -- you know, in the history of the stock  
20 that would be known to someone on February 14,  
21 2020.

22 I could take my assumption, apply my  
23 methodology, and see what would have happened on  
24 this date, on this date, on this date, on this  
25 date, on this date, just to see if there's

1 something unique -- or not even unique, but  
2 something specific to Navidea -- it could be also  
3 specific to other companies -- that renders this  
4 assumption and model not a reliable predictor of  
5 the impact of trading volume on share price.

6 You could do that. Right?

7 MR. KAZAN: Object to the form.

8 THE WITNESS: We could do that, yes.

9 BY MR. ZIMMER:

10 Q Did you do it?

11 A No.

12 Q Okay. Now, you opined that Mr. Orr did  
13 not take into consideration the thinly traded  
14 nature of Navidea shares.

15 What's that opinion based on?

16 A That was on page 13 of my report. Or it  
17 actually starts on page 12.

18 Q Great.

19 A Essentially what we're saying is it would  
20 take -- he didn't take into account that it would  
21 take more than one quarter to sell the shares. He  
22 just assumed he could go down and sell them.

23 Q But what you really mean is -- you said  
24 the 15 percent is not peer reviewed or, you know,  
25 Holy Grail. Right? Come down from the mountain

1 or anything.

2 He did not -- clearly, he didn't use your  
3 assumption as to how long it would take to dispose  
4 of the shares without affecting the market.

5 Right?

6 A That's correct. Yes.

7 Q Is that what you're taking issue with, is  
8 that he didn't use your assumption?

9 A I'm saying he didn't do any assumption.  
10 He didn't do anything.

11 Q Well, how do you know that?

12 A It wasn't in his report. He just said,  
13 "Here's the stock. Here's the price on that  
14 day."

15 Q Right.

16 A So he assumed you could sell it all on the  
17 same day.

18 Q Okay. You say he didn't take into account  
19 the thinly traded nature of Navidea stock.

20 Isn't what you're actually saying, In my  
21 opinion, the thinly traded nature of Navidea stock  
22 would prevent it from all being sold on a single  
23 day without impacting price?

24 A Yes.

25 Q You're not -- you don't know, literally,

1 that he didn't take it into account.

2 You're saying, if he had used your  
3 assumptions, clearly, and your model, it clearly  
4 wouldn't have come out with that result. Correct?

5 A Correct.

6 Q And that's basically what your opinion is:  
7 You think he should have. Correct?

8 A Correct.

9 Q Okay. But, again, do you know whether  
10 this is the only -- is your proprietary -- I guess  
11 it would great if it was.

12 Is your proprietary model combined with  
13 this 15 percent assumption the only way that one  
14 could attempt to take into account the thinly  
15 traded nature of Navidea stock when trying to  
16 value shares?

17 A No.

18 Q Okay. And does your analysis assume --  
19 well, let me ask you first, are you aware that  
20 there were restrictive legends placed on shares  
21 issued in Dr. Golberg's name related to a lockup  
22 agreement and an escrow agreement?

23 A Yes.

24 Q Okay. And that was in addition to a  
25 restrictive legend saying that the shares had not

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1     been publicly registered.   Right?

2           A     That's my understanding.   Yes.

3           Q     Okay.   Did your -- did any of the shares  
4     that formed -- excuse me.

5                     Did any of the shares included in private  
6     placements that formed the basis for the MPI study  
7     involve restrictive legends like the ones put on  
8     the shares issued in Dr. Golberg's name relating  
9     to an independent lockup and escrow agreement,  
10    rather than just Regulation D?

11          A     I don't know the answer to that.

12          Q     Okay.   Does your assumption that he would  
13    sell the shares on those dates assume that those  
14    restrictive legends had been removed on those  
15    dates?

16          A     Yes.

17          Q     Okay.   And do you disagree that the  
18    shares wouldn't be salable with those legends on  
19    them?

20                     MR. KAZAN:   Object to form.

21                     THE WITNESS:   Can you repeat that?

22    BY MR. ZIMMER:

23          Q     Do you disagree with the fact that shares  
24    with those two restrictive legends regarding a  
25    lockup period and an escrow period made the shares

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1      nonsalable?

2            A      Correct. I agree.

3            Q      Do you know whether Dr. Golberg ever asked  
4      to have the legends removed?

5            A      I do not.

6            Q      Do you know whether Navidea ever refused  
7      to remove the legends?

8            A      I do not.

9            Q      Okay. Are you still okay? I'm going to  
10     move on.

11          A      How much longer do we have?

12          Q      Much less time. Yeah. I predicted 2:00.  
13                   I will want to take a little time to go  
14     over my notes before we wrap up, but certainly we  
15     will be done with the Macrophage portion by two  
16     o'clock. It's 1:05 now.

17          A      Okay. We can finish up.

18          Q      Okay. So you state in your report that  
19     there were three types of potential valuation  
20     analyses that can be done on a company. Correct?

21          A      Correct.

22          Q      Can you just state what they are?

23          A      There's an asset approach, an income  
24     approach, and a market approach.

25          Q      Is the asset also sometimes referred to as

1 book value approach?

2 A No.

3 Q Is that what you're referring to?

4 A Not really. Basically, an asset approach  
5 is you take all of the assets at market value less  
6 the debt at market value.

7 Q Market value as opposed to book value?

8 A Correct.

9 Q Is book value also a way to value a  
10 company?

11 A No, not particularly. It depends on the  
12 company, but generally, no.

13 Q Okay. And why is that?

14 A Because book value is historical cost,  
15 whereas valuation is typically market value.

16 Q Okay.

17 A There are exceptions to that.

18 Q Okay. But that -- if were it appropriate,  
19 I mean, that would just be a fourth. Right?

20 I'm just trying to understand that we're  
21 talking about the same thing as we talk.

22 So when you say an "asset value," you're  
23 talking about an independent valuation of the  
24 assets, not going off what's recorded in the  
25 books. Correct?



1           A       Well, there are cases where the assets of  
2       a company reflect market value, such as a bank  
3       or --

4           Q       Meaning they're not -- they're  
5       advertised --

6           A       They market to market.

7           Q       Okay. And you talk about the market  
8       approach. Right?

9                    You said that the way to conduct a market  
10       analysis is to look at comparable compensation.

11                   Is that right?

12          A       That's one way, yes.

13          Q       How that would work?

14          A       Basically, you can go out and either look  
15       at other publicly traded companies in the same  
16       market or you can go look at transactions in  
17       either private or public companies.

18          Q       And when you say, "publicly traded," is  
19       that just because the information is available?

20          A       Yes.

21          Q       Okay. And so there's nothing -- and is  
22       the distinction between publicly traded and not  
23       publicly traded meaningless in terms of the value  
24       of the companies?

25                   MR. KAZAN: Object to the form.

1                   THE WITNESS: No, because you can  
2                   look at public companies in the same  
3                   industry and come up with market multiples  
4                   and market indications, or can you look at  
5                   transactions.

6                   So sometimes you'll have private  
7                   companies that sold and you can determine  
8                   indications of value from those private  
9                   companies.

10       BY MR. ZIMMER:

11       Q       How would you get that information?

12       A       We have access to databases that report  
13       the sales, so they give us all the metrics we  
14       need.

15       Q       Like, what's the basis for the reporting  
16       on that? Do you know?

17       A       What do you mean?

18       Q       Well, you said you have access to  
19       databases. Do you know where they get their  
20       information?

21                   Is that, like, they review documents?

22                   How do they get that information that you  
23       get from your, you know --

24       A       They have -- there are brokers that report  
25       the deals to the database company.

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1 Q Okay. So it's reported.

2 A There's a couple sources. One is  
3 reported. The other way is there's public  
4 companies that buy private companies, and that's  
5 disclosed. So you could -- there's databases or  
6 information sources that give you that  
7 information.

8 Q Okay. If there were recent transactions  
9 in the same company, would those be instructive?

10 A Yes.

11 Q Okay. Are you familiar with the concept  
12 of a bona fide offer?

13 A That's a legal term, but I know that  
14 offer --

15 Q Well, I'm not using it in a legal sense,  
16 but, you know, an actual credible offer to  
17 purchase.

18 Would you consider that a meaningful input  
19 in a market analysis?

20 A We would look at that, yes.

21 Q Okay. It's something you would consider?

22 A Yes.

23 Q Okay. How would you know about that?

24 Is there, like, a resource you would use  
25 to look for those types of offers as opposed to

1 closed transactions?

2 A Well, if there's offers, usually the  
3 company discloses that to us.

4 Q The company would disclose it to you?

5 A Absolutely.

6 Q And how do you know whether those  
7 disclosures are, you know, reliable? accurate?

8 A Well, we usually look at the offers that  
9 come in. We use that in certain situations.

10 Q Okay. And it would be kind of a judgment  
11 as to whether it's reliable?

12 A Well, it depends. Like, if there's  
13 multiple offers -- sometimes you get a case where  
14 there's multiple offers on the table and you  
15 figure out, like --

16 Q What I'm saying is, since it's not a  
17 completed transaction, your firm would use some  
18 type of, you know, discretion to determine whether  
19 the information was credible since it wasn't,  
20 like, verifiably completed already.

21 Is that right?

22 A Well, there's a lot of situations that can  
23 happen. I mean, you can get an offer -- usually  
24 you get a letter of intent first, which gives you  
25 kind of an indication of the value. Then they'll

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1 go through a due diligence process, and then they  
2 come up with a purchase agreement.

3 Q Okay. Did you know that Navidea had told  
4 the New York Stock Exchange that it was expecting  
5 investments of \$10 and 15 million in Macrophage?

6 A Yes.

7 Q Okay. And were you aware that Navidea was  
8 under -- I don't mean it in a pejorative way, but  
9 under a threat, potentially, of delisting from the  
10 New York Stock Exchange based, in part, on  
11 shareholder equity requirements?

12 A I was aware of that, yes.

13 Q Okay. Do you know how seriously that was  
14 taken as a concern inside of Navidea?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: No.

17 BY MR. ZIMMER:

18 Q Okay. You didn't look at any board  
19 minutes or deposition testimony or anything about  
20 how seriously they took that threat and how they  
21 perceived it with respect to the company's future?

22 A No.

23 Q Okay. And did you know that it was the  
24 CEO, CFO, and COO, same person, of Navidea who  
25 made representations to the New York Stock

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1     **Exchange?**

2                   MR. KAZAN:   Object to the form.

3                   THE WITNESS:   No.

4     BY MR. ZIMMER:

5         **Q     Do you know that they were made in order**  
6         **to address New York Stock Exchange's concerns**  
7         **about shareholder equity in the context of trying**  
8         **to avoid delisting?**

9                   MR. KAZAN:   Object to the form.

10                  THE WITNESS:   Again, I don't know.

11     BY MR. ZIMMER:

12         **Q     You don't know?**

13         A     I don't know.

14         **Q     Are you aware of the requirements about**  
15         **accurate statements to regulators by officers of**  
16         **public companies?**

17                  MR. KAZAN:   Object to the form.

18                  THE WITNESS:   From a layman's point  
19                  of view, but not from a legal point view,  
20                  yes.

21     BY MR. ZIMMER:

22         **Q     What's your understanding?**

23         A     Well, my understanding is that it's --  
24         there's criminal issues with making false  
25         statements to the New York Stock Exchange.

1 Q Okay. I think, in your report, you take  
2 issue with Mr. Orr's consideration of those  
3 statements. You go into greater detail about he  
4 doesn't talk about what type of interest, what  
5 percentage of interest, and things of that nature.

6 Are you finding fault with his considering  
7 those statements to the New York Stock Exchange  
8 under those circumstances, or are you just saying  
9 that a more detailed analysis was required?

10 A I'm just saying that there is a more  
11 detailed analysis required.

12 Q Okay. Did you know that, under the  
13 August 14 agreement, the intent was to give  
14 Dr. Golberg voting control of Macrophage?

15 MR. KAZAN: Object to the form.

16 THE WITNESS: Yes.

17 MR. ZIMMER: Okay.

18 BY MR. ZIMMER:

19 Q You talked about people wanting -- well,  
20 okay. Let me back up a little bit.

21 The representation to the stock exchange  
22 about these offers was made in the context of a  
23 representation that Macrophage's financial results  
24 would continue to be consolidated with Navidea's  
25 financial results and, therefore, an influx of

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1 capital into Macrophage would impact Navidea's  
2 shareholder equity.

3 Were you aware that that was the nature of  
4 the representation?

5 A No.

6 MR. KAZAN: Object to the form.

7 THE WITNESS: Sorry.

8 MR. ZIMMER: Okay. If you would  
9 pause for a second, especially when I ask  
10 good questions.

11 BY MR. ZIMMER:

12 Q Do you know what the requirements are for  
13 a public -- requirements or -- do you know what  
14 the circumstances are under which a public company  
15 may consolidate the financial results of a  
16 subsidiary for report purposes?

17 A Not off the top of my head.

18 Q You don't. Okay.

19 Do you know if it has to do with the  
20 percentage of ownership?

21 A That's my understanding.

22 Q Okay. So if Navidea's representing that  
23 they're going to consolidate the financial results  
24 post investment, isn't it reasonable to make an  
25 assumption that Navidea would retain the necessary



1 percentage of ownership to consolidate?

2 MR. KAZAN: Object to the form.

3 THE WITNESS: Again, that's an  
4 accounting issue.

5 BY MR. ZIMMER:

6 Q I thought you were an accountant.

7 A I am an accountant. But that's public  
8 reporting, and those rules have changed since I  
9 did public reporting.

10 Q Okay. You would not expect, though, the  
11 CEO of a public company to make knowingly false  
12 statements to the New York Stock Exchange about  
13 something like that. Right?

14 A Again, I can't speculate.

15 Q Okay. But your understanding is there  
16 would be criminal penalties if they did?

17 A That's my understanding, yes.

18 Q Okay. Does the existence of criminal  
19 penalties from misstatements like that lend some  
20 credibility to statements when you're trying  
21 to -- you said you have to do a little bit of an  
22 analysis to see whether you could use the  
23 company-provided information.

24 If they said, "Look, we've made these  
25 statements to regulators under penalty of

1 perjury," I mean, would that be a factor you would  
2 take into consideration when you were trying to  
3 decide whether to use that information as part of  
4 your analysis?

5 A Again, if we had an offer and we had the  
6 details, we'd use it.

7 Q Well, if you had information from the  
8 company, it may not have been as concrete, but  
9 they said, "Look, we've told our regulators that  
10 this was going to happen, under penalty of  
11 perjury," would that carry some weight in terms of  
12 the credibility of the information?

13 A As far as it existed, yes. We would say  
14 yes, it existed.

15 Q No. As far as whether it was accurate,  
16 that it was true, that they weren't making it up.

17 A Yes.

18 Q Okay. So if one was familiar with the  
19 ownership percentage that a public company would  
20 have to retain in order to consolidate, couldn't  
21 one back out the percentage of ownership the  
22 company could possibly sell and still be left with  
23 the required amount -- percentage to consolidate  
24 financial results?

25 A What do you mean? In terms of coming up

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1 with value?

2 Q Well, let me just give you -- and, again,  
3 this is illustrative.

4 If one needed to have a 51 percent  
5 ownership in a company to consolidate and one  
6 owned 95 percent of the company, then could one  
7 sell 95 percent of the company and continue to  
8 consolidate?

9 MR. KAZAN: Object to the form.

10 THE WITNESS: I don't understand the  
11 question. Could you repeat the question?

12 MR. ZIMMER: Yes.

13 BY MR. ZIMMER:

14 Q If the consolidation rules -- the public  
15 reporting rules required a 51 percent ownership --

16 A That's your assumption.

17 Q Assumption.

18 A Okay.

19 Q -- in order to consolidate financial  
20 results of a subsidiary, and the public company  
21 owned 95 percent of the subsidiary, could it sell  
22 95 percent of the subsidiary and continue to  
23 consolidate?

24 A No.

25 Q You'd have to subtract the 51 percent they

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1 would be required to hold. Correct?

2 A Right.

3 Q Okay. Now, you also talked about  
4 preferred shares.

5 A Correct.

6 Q What is the implication of what you're  
7 saying there in terms of value?

8 A Well, in order to -- like, my  
9 understanding is we were talking about common  
10 shares. So if someone came in and bought  
11 preferred shares, that may not give us an  
12 indication of value of the common shares.

13 Q Okay. If it required a shareholder vote  
14 to issue preferred shares and the August agreement  
15 gave Dr. Golberg voting control and there had  
16 never been any discussion of issuing additional  
17 common shares in connection with those two  
18 investments, then that would indicate that they  
19 were not going to be preferred shares.

20 Correct?

21 MR. KAZAN: Object to the form.

22 THE WITNESS: I don't know. I can't  
23 speculate.

24 BY MR. ZIMMER:

25 Q You can't speculate if -- if a company's

1 represented that they're in discussions to sell an  
2 ownership interest in a company where it owns  
3 95 percent of the common interest and no  
4 preferred -- okay? -- and it does not have the  
5 power, nor has it ever discussed issuing more  
6 preferred shares, and yet it's telling a regulator  
7 that it's going to be getting these investments  
8 and consolidating, that doesn't -- that doesn't  
9 speak to whether or not they could have been  
10 contemplating selling preferred shares?

11 MR. KAZAN: Object to the form.

12 THE WITNESS: Again, I don't know if  
13 they had the power or don't have the power  
14 to sell preferred shares.

15 BY MR. ZIMMER:

16 Q Okay. Assume they don't have the power to  
17 issue preferred shares --

18 A Okay.

19 Q -- and assume they had never discussed  
20 issuing preferred shares with the people who do --

21 A Okay.

22 Q -- and assume they have told the regulator  
23 that they're expecting two large investments --

24 A Okay.

25 Q -- which would be cash in, and the only

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1     **thing they have to sell is common shares, would**  
2     **that require one to assume they were going to be**  
3     **selling common shares and in an amount low enough**  
4     **to allow them to continue to consolidate?**

5                   MR. KAZAN:   Object to the form.

6                   THE WITNESS:   That's a fair  
7                   assumption, yes.

8     BY MR. ZIMMER:

9         **Q     You opine that Dr. Golberg -- I'm sorry.**  
10         **You opine that Mr. Orr did not deduct the**  
11         **present value of Navidea's shares from his damages**  
12         **analysis. What does that mean?**

13         A     No. My last point?

14         **Q     Yes.**

15         A     Oh, I was just saying that if they were  
16         to -- if he got the shares today, he didn't  
17         consider that. So if he had tradeable shares  
18         today, he didn't take that out of this damages.

19         **Q     Well, when you say, "if he had tradable**  
20         **shares," what does that mean?**

21         A     It means if they issued him the stock and  
22         cleared the legends on the stock.

23         **Q     Okay. But if Mr. Orr were opining on a**  
24         **damages amount that doesn't include a remedy of**  
25         **specific performance of issuing the shares, in**

1     that circumstance, there would be no basis to  
2     deduct the value of the shares. Right?

3           A     That's correct. Yes.

4           Q     You're just looking for money?

5           A     Pardon?

6           Q     You're just looking for the value. You're  
7     not looking to have the shares and have the  
8     difference in value?

9           A     Correct.

10          Q     Okay.

11                     MR. ZIMMER: Why don't we take five  
12                     minutes and let me look through my notes?

13                     MR. KAZAN: Sure.

14                     MR. ZIMMER: We're getting close.

15                     (A recess was held off the record.)

16                     MR. ZIMMER: Back on the record.

17     BY MR. ZIMMER:

18           Q     Do you know that Navidea claims that, to  
19     this day, the prerequisites to issuing the shares  
20     to Dr. Golberg may not have occurred and that  
21     they're not even owed to him yet?

22           A     No. I'm not aware of that.

23           Q     That didn't play any role in your  
24     analysis?

25           A     No.

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1 MR. ZIMMER: That's it.

2 MR. KAZAN: Oh.

3 MR. ZIMMER: We're done.

4 MR. KAZAN: I don't have any  
5 questions.

6 THE COURT REPORTER: Attorney Kazan,  
7 do you have a preference for the format of  
8 your transcript?

9 MR. KAZAN: PDF is fine.

10 THE COURT REPORTER: Thank you.

11 (The witness was dismissed, and the  
12 deposition was concluded at 1:42 p.m.)

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1 C E R T I F I C A T E O F D E P O N E N T

2

3 I, WILLIAM F. MURRAY, ASA, CPA/ABV, CFF, have  
4 read the foregoing transcript of the testimony  
5 given, and it is true and accurate, to the best of  
6 my knowledge, as originally transcribed and/or  
7 noted on the attached Errata Sheet.

8

9

10 WILLIAM F. MURRAY, ASA, CPA/ABV, CFF

11

12 Subscribed to and sworn to before me on  
13 this \_\_\_\_ day of \_\_\_\_\_, 2021.

14

15

16 Notary Public

17 My Commission expires:

18

19

20 1:19-cv-01578-VEC

21 NAVIDEA BIOPHARMACEUTICALS

22 -vs-

23 MICHAEL M. GOLDBERG, M.D.

24 WILLIAM F. MURRAY, ASA - DECEMBER 6, 2021

25 WJL

**NAVIDEA BIOPHARMACEUTICALS, INC. vs MICHAEL M. GOLDBERG, M.D.****William F. Murray, CPA/ABV/CFF, ASA on 12/06/2021****Page 186**

1    ERRATA SHEET: Please note any error(s) and/or  
 2    correction(s) on this sheet. The rules require a  
 3    reason for any change or correction. It may be  
 4    general, such as "to correct stenographic error"  
 5    or "to clarify the record" or "to conform with the  
 6    facts."

7    To: Barry M. Kazan, Esq.

8    Re: Navidea Biopharmaceuticals, Inc. v.  
 9    Michael M. Goldberg, M.D.

10    Deposition of William Murray, ASA, held on  
 11    December 6, 2021

12	Page	Line	Correction	Reason For Change
13				
14				
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1 STATE OF CONNECTICUT

2 COUNTY OF TOLLAND

3 I, Wendy J. Leard, a notary public for the  
4 State of Connecticut, do hereby certify that the  
5 deposition of WILLIAM F. MURRAY, ASA, CPA/ABV,  
6 CFF, a witness, was taken before me pursuant to  
7 the Federal Rules of Civil Procedure, held at the  
8 offices of Halloran & Sage, 225 Asylum Street,  
9 Hartford, Connecticut, commencing at 9:44 a.m., on  
10 Monday, December 6, 2021.

11 I further certify that the deponent was first  
12 sworn by me to tell the truth, the whole truth,  
13 and nothing but the truth, and was examined by  
14 counsel, and his testimony stenographically  
15 reported by me and subsequently transcribed as  
16 hereinbefore appears.

17 I further certify that I am not related to  
18 the parties hereto or their counsel, and that I am  
19 not in any way interested in the event of said  
20 cause.

21 Dated at Somers, Connecticut, this 13th day  
22 of December, 2021.



-----  
Wendy J. Leard  
Notary Public

23  
24  
25 My Commission Expires May 31, 2022

## NAVIDEA BIOPHARMACEUTICALS, INC. vs MICHAEL M. GOLDBERG, M.D.

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